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THE

TRIAL

OF

ALEXANDER M'LAREN,

AND

THOMAS BAIRD,

BEFORE THE

HIGH COURT OF JUSTICIARY,

AT EDINBURGH,

ON THE 5TH AND 7TH MARCH 1817,

FOR

Sedition.

TAKEN IN SHORTHAND

BY

JOHN DOW, Esq. W. S.

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1817.

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Edinburgh,
May 19, 1817.

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THE

TRIAL

OF

ALEXR. M'LAREN & THOMAS BAIRD

FOR

SEDITION.

PRESENT.

RT. HON. DAVID BOYLE, LORD JUSTICE-CLERK.

LORD HERMAND. | LORD PITMILLY.
LORD GIILIES. | LORD RESTON.

Counsel for the CROWN.

RT. HON. ALEXANDER MACONOCHIE, LORD ADVOCATE.
JAMES WEDDERBURN, ESQ. SOLICITOR-GENERAL.

H. H. DRUMMOND, ESQ. | H. WARRENDER, ESQ. AGENT.
J. A. MACONOCHIE, ESQ.

Counsel for ALEXANDER M'LAREN.

JOHN CLERK, ESQ. | JAMES CAMPBELL, ESQ.
J. P. GRANT, ESQ. | MR R. MORTON, AGENT.

Counsel for THOMAS BAIRD.

FRANCIS JEFFREY, ESQ. | J. S. STEWART, ESQ.
HENRY COCKBURN, ESQ. | MR A. CAMPBELL, W. S. AGENT.

LORD JUSTICE CLERK.—ALEXANDER M'LAREN and THOMAS BAIRD,—Attend to the Indictment against you, which the Clerk of Court will read.

"ALEXANDER M'LAREN, now or lately weaver in Kilmarnock, in the county of Ayr, and THOMAS BAIRD, merchant there, you are Indicted and Accused, at the instance of ALEXANDER MACONOCHIE of Meadowbank, his Majesty's Advocate, for his Majesty's interest: THAT ALBEIT, by the laws of this and of every other well-governed realm, SEDITION is a crime of a heinous nature, and severely punishable: YET TRUE IT IS AND OF

VERITY, that you the said Alexander M'Laren and Thomas Baird are both and each, or one or other of you, guilty thereof, actors or actor, or art and part: IN SO FAR AS, you the said Alexander M'Laren did, at a public meeting, held at Dean Park, in the vicinity of Kilmarnock aforesaid, on the 7th day of December 1816, or on one or other of the days of that month, or of November immediately preceding, or of January immediately following, which meeting was attended by a great multitude of persons, chiefly of the lower orders, wickedly and feloniously deliver a speech, containing a number of seditious and inflammatory remarks and assertions, calculated to degrade, and bring into contempt the government and legislature, and to withdraw therefrom the confidence and affections of the people, and fill the realm with trouble and dissention; in which speech there were the following or similar wicked and seditious expressions:—"That our sufferings are "insupportable, is demonstrated to the world; and that they "are neither temporary, nor occasioned by a transition 'from "war to peace,' is palpable to all, though all have not the "courage to avow it. The fact is, we are ruled by men only "solicitous for their own aggrandizement; and they care no "farther for the great body of the people, than they are subservient to their accursed purposes. If you are convinced "of this, my countrymen, I would therefore put the question, "Are you degenerate enough to bear it? Shall we, whose "forefathers set limits to the all-grasping power of Rome; "Shall we, whose forefathers, at the never to be forgotten field "of Bannockburn, told the mighty Edward, at the head of "the most mighty army ever trode on Britain's soil, 'Hitherto shalt thou come, and no farther;' Shall we, I say, whose "forefathers defied the efforts of foreign tyranny to enslave "our beloved country, meanly permit, in our day, without a murmur, a base oligarchy to feed their filthy vermin "on our vitals, and rule us as they will? No, my countrymen. Let us lay our petitions at the foot of the Throne, "where sits our August Prince, whose gracious nature will incline his ear to listen to the cries of his people, which he is "bound to do by the laws of the country. But, should he be "so infatuated as to turn a deaf ear to their just petition, he "has forfeited their allegiance. Yes, my fellow townsmen, in "such a case, to hell with our allegiance." And you the said Alexander M'Laren did, shortly thereafter, deliver, or cause to be delivered, your said speech, in manuscript, to Hugh Crawford, printer in Kilmarnock, to be by him printed and published. And you the said Thomas Baird having been present at the said meeting, and having heard the said speech,

and others of a similar tendency, delivered there, did, shortly thereafter, and in the course of the said months of December or January, wickedly and feloniously print, or cause or procure to be printed, at the printing-office of the said Hugh Crawford, in Kilmarnock aforesaid, a seditious tract or statement, entitled, "Account of the Proceedings of the Public "Meeting of the Burgesses and Inhabitants of the Town of "Kilmarnock, held on the 7th of December 1816, for the pur-"pose of deliberating on the most proper method of remedy-"ing the present distresses of the country, with a full report of "the speeches on that occasion;" which printed tract or statement did contain a number of seditious and inflammatory remarks and assertions, calculated for the purposes above mentioned; and, in particular, a report of the said speech of you the said Alexander M'Laren, with the passage aforesaid, in the same, or nearly the same terms; as also the following wicked and seditious passages, viz. Page ninth,—And a House of "Commons—but the latter is corrupted; it is decayed and "worn out; it is not really what it is called, it is not a House "of Commons."—Page tenth—"The House of Commons, "in its original composition, consisted only of commoners, "chosen annually by the universal suffrage of the people. No "nobleman, no clergyman, no naval or military officer, in "short, none who held places, or received pensions from Go-"vernment, had any right to sit in that House.—This is what "the House of Commons was, what it ought to be, and what "we wish it to be; this is the wanted change in our form of "Government,—the Commons House of Parliament restored "to its original purity; and this, beyond a doubt, would strike "at the root of the greatest part of the evils we groan under "at the present day."—Page eleventh, "Is it any wonder, "my friends, that this country is brought to its present un-"precedented state of misery, when the rights of the people "have been thus wantonly violated?"—Page twelfth, "But "let us come nearer home. Look at the year 1793, when "the debt amounted to two hundred and eleven millions, and "the annual taxation to about eighteen millions; when liber-"ty began to rear her drooping head in the country; when "associations were framed from one end of the kingdom to "another, composed of men eminent for their talents and vir-"tue, to assert their rights; when a neighbouring nation had "just thrown off a yoke which was become intolerable,—what "did the wise rulers of this country do? Why, they declared "war, not only against the French nation, but also against "the friends of liberty at home."—Page twenty-ninth, "Our "oppressors have taxed the very light of Heaven; and they

" seem surprised and indignant that we should not bear the " insupportable burden, with which folly, corruption, and " avarice, have loaded us, without reluctance and complaint." —Page thirty-second, " Their *reverend* hirelings would con- " vince you that you are suffering under the visitation of the " Almighty, and therefore ought to be submissive under the " chastening stroke."—Page thirty-fifth, " We have these " twenty-five years been condemned to incessant and unparal- " leled slavery, by a usurped Oligarchy, who pretend to be our " guardians and representatives, while, in fact, they are nothing " but our inflexible and determined enemies."—" They have " robbed us of our money, deprived us of our friends, violated " our rights, and abused our privileges."—" At present we have " no representatives; they are only nominal, not real; active " only in prosecuting their own designs, and at the same time " telling us that they are agreeable to our wishes."—And you the said Thomas Baird having obtained a number of copies of the said printed tract or statement, containing the said false, wicked, and seditious passages, and others of a similar tendency, and being altogether of a seditious nature, did, in the course of the said months of December and January, and of February immediately following, at your shop in Kilmarnock aforesaid, wickedly and feloniously sell, publish, and circulate, or cause to be sold, published, or circulated, many of the said copies thereof, at the price of fourpence each, or other small sum, one of which was then and there purchased by Hugh Wilson, weaver in Kilmarnock. And you the said Alexander M'Laren and Thomas Baird having been apprehended and taken before William Eaton, Esquire, Sheriff-substitute of the county of Ayr, did, in his presence, at Kilmarnock, on the 26th day of February 1817, both and each of you emit and subscribe a declaration; which declarations, being to be used in evidence against each of you respectively, and the manuscript of nineteen pages, and the half sheet of paper, titled on the back, " No. 5." both referred to in the said declaration of you the said Thomas Baird, being to be used in evidence against you the said Thomas Baird,—as also, three copies of the printed tract, or statement, above mentioned, being to be used in evidence against both and each of you, will be lodged in due time in the hands of the Clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same. At least, times and places foresaid respectively, the said seditious speech was wickedly and feloniously delivered, containing the said or similar wicked and seditious expressions: And the said seditious tract or statement, containing the said seditious and inflammatory passages, and

others of a similar tendency, was wickedly and feloniously printed, sold, published, and circulated, or caused or procured so to be, as above mentioned: And you the said Alexander M'Laren and Thomas Baird are both and each, or one or other of you, guilty thereof, actors or actor, or art and part. ALL WHICH, or part thereof, being found proven by the verdict of an Assize, before the Lord Justice-General, the Lord Justice-Clerk, and Lords Commissioners of Justiciary, you the said Alexander M'Laren and Thomas Baird OUGHT to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

"H. HOME DRUMMOND, *A. D.*"

LIST OF WITNESSES.

1. William Eaton, Esquire, Sheriff-substitute of Ayrshire.
2. Thomas Weir, Sheriff-clerk-depute of Ayrshire.
3. Alexander Murdoch, writer in Ayr.
4. Andrew Finnie, merchant in Kilmarnock.
5. William Merrie, wright there.
6. Hugh Crawford, printer there.
7. Thomas Murray, journeyman to the said Hugh Crawford.
8. James Johnstone, muslin agent there.
9. David Ramsay Andrews, writer there.
10. Hugh Wilson, weaver there.
11. James Samson, weaver there.
12. David Bow, shopman to Thomas Baird, merchant in Kilmarnock.

H. HOME DRUMMOND, *A. D.*

LIST OF ASSIZE.

County of Edinburgh.

James Watson, of Saughton.
Charles Fraser, of Williamston.
Alexander Falconer, baker in Dalkeith.
William Crichton, glazier there.
William Watson, farmer, Middle Kenleith.
John Dodds, farmer, Saughton Mill.
John Drysdale, farmer, Clermiston.

County of Haddington.

George Rennie, of Fantassie.
David Pringle, of Blegbie.
David Skirving, farmer at East Garleton.
Peter Sheriff, farmer at Drem.
John Hislop junior, grocer in Haddington.

County of Linlithgow.

Norman Shairp, younger of Houston.
John Stewart, of Binny.
James Gardner, junior, merchant in Bathgate.
John Calder, farmer at Drumcross.
John Russel, farmer at Mosside.

City of Edinburgh.

William Marshall, jeweller, South Bridge Street, Edinburgh.
Walter Lamb, upholsterer in Edinburgh.
Archibald M'Kinlay, haberdasher in Edinburgh.
John Baxter, confectioner there.
Sharp Callender, clothier there.
William Pattison, junior, haberdasher in Edinburgh.
Andrew Mellis, haberdasher there.
John Pollock, insurance-broker there.
James Howden, jeweller there.
John Drummond, manufacturer there.
Alexander Anderson, general agent there.
James Spence, perfumer there.
Peter Brown, linen-draper there.
William Kennedy, glover there.
James Gilchrist, clothier there.
Charles Howden, shoemaker there.
Edward Gilchrist, haberdasher there.
James Virtue, button-manufacturer there.
James Richmond, insurance-broker there.
James Stoddart, wine-merchant there.
Andrew Wauchope, turner there.

Town of Leith.

James Duncan, ship-owner in Leith.
James Harper, corn-merchant there.
Wm. Lindsay, wine-merchant there.
James Skinner, cooper there.
John Gowan, wood-merchant there.
Charles Murray, wright there.
John Sommerville, tanner there.

AD. GILLIES.
D. MONYPENNY.
DAVID DOUGLAS.

LORD JUSTICE-CLERK.—Alexander M'Laren and Thomas Baird;—What do you say to the libel—are you guilty or not guilty?

PANNELS.—Not guilty.

The following Defences had been given in.

DEFENCES for ALEXANDER M'LAREN, Weaver in Kilmarnock, to the Indictment at the Instance of ALEXANDER MACONOCHIE of Meadowbank, his Majesty's Advocate, for his Majesty's interest, for Sedition.

"The Pannel has been employed from his early youth in his trade as a weaver. He has always preserved the most sober and orderly habits, and, if necessary, he could bring forward complete proof of his uniform and steady loyalty. He never was engaged in any riot or disturbance whatever, and never was connected or accused of being connected with any of the societies, or combinations of men formed for unlawful purposes, or whose objects have been regarded with suspicion. He was a volunteer in the Glasgow Highland Regiment, during the whole period of its establishment, and when the volunteer system was put an end to, he transferred his services to the Local Militia. During the greatest part of his service, he was a serjeant, a situation which he obtained by his good conduct.

"Of late years, the pannel, among many others, lamented the distresses of the country, from which he himself had severely suffered in his situation and prospects. He therefore approved of the petitions, which were presented in such numbers to his Royal Highness the Prince Regent, and the two Houses of Parliament, the object of which was to obtain relief.

"A meeting was held near Kilmarnock in the month of December last, at which a great multitude of people attended, for the purpose of considering of the expediency of petitioning His Royal Highness the Prince Regent and the Houses of Parliament upon the present distressed state of the country, and the subject of Parliamentary Reform. The pannel was present at that meeting, and made a short speech, not in the terms alleged in the libel, but in other terms, which appeared to him to be warranted by law in such a case. The meeting was afterwards addressed by other persons; certain resolutions were agreed to; petitions were drawn out, addressed to the Prince Regent, and to the two Houses of Parliament. These petitions having been signed by a great number of persons, were sent to London and presented. The petitions

addressed to the two Houses of Parliament were presented, read, and ordered to lie on the table of each house. In his speech, the pannel did nothing more than lawfully recommend the said petitions; and he denies that he is guilty of the crime of Sedition.

"The pannel took no charge whatever of printing the pamphlet produced with the libel; and he finds that his own speech is inaccurately reported.

"It is an evident misconception, that such a speech, spoken at a lawful meeting for lawful purposes, was calculated to degrade and bring into contempt the Government and Legislature, and to withdraw therefrom the confidence and affections of the people, and fill the realm with trouble and dissentions. If there are grievances or abuses, or such men as bad rulers, or bad ministers, those who complain against them, or petition against them, do only exercise their legal rights. The pannel, while he was disposed to petition for redress of grievances, was filled with the same reverence for the Legislature and all its different branches, and for the Government of the country as established by law, that is impressed on the mind of every good subject.

"Under protestation to add and eik.

"JOHN CLERK.
"J. P. GRANT.
"JAMES CAMPBELL."

LIST OF EXCULPATORY WITNESSES.

Hugh Wilson, weaver, Kilmarnock.
James Samson, ditto, ditto.
James Johnstone, muslin agent there.
John Kennedy, schoolmaster there.
John Blackwood, wool spinner there.

DEFENCES for THOMAS BAIRD, to the Indictment at the Instance of his Majesty's Advocate for the Crime of Sedition.

"The pannel denies that he is guilty of the crime charged against him. He was not a speaker at the meeting mentioned in the indictment, and neither spoke nor wrote any of the words there set forth. He also denies that he printed or published any of the said words; and if any circumstances shall be proved tending to connect him with the publication or sale thereof, he has, no doubt, both from the tenor of the said words and the nature of his concern with them, that it will be apparent that he is entirely guiltless of the crime here charged.

"Under protestation to add and eik.

"F. JEFFREY.
"H. COCKBURN.
"J. S. STEWART."

LIST OF EXCULPATORY WITNESSES.

John Andrews, Chief Magistrate of Kilmarnock.
David Ramsay Andrews, writer there.
Walter Andrews, writer there.
Andrew Fiunie, merchant there.
James Johnstone, muslin agent there.
John Brown, writer there.
Bailie William Brown, manufacturer there.
John Wyllie, assessor of taxes there.
Robert Howie, merchant there.
Thomas Murray, printer there.
The Rev. James Kirkwood, relief minister there, residing at Riccarton.

Lord Justice-Clerk.—Have the Counsel for the pannels any objections to state to the relevancy of this indictment?

Mr Campbell.—I appear on behalf of the pannel, Alexander M'Laren; and it is not my intention to state any objections to the relevancy of the libel, but to explain to the Court and the Jury the nature of the concern which he had in the transactions now brought before this Court. At the same time, it is proper I should state, that we who are his Counsel hold it to be the undoubted law, and law which has never been questioned in this part of the country, that it is the province of the Jury to consider both the facts and the law of the case;—that it is for them to say whether the facts charged in the indictment are proved in the course of the trial, and if they find them proved, whether these facts do amount to the crime charged. And that being the case, we hold that we are not deprived of the benefit of any pleas which we may afterwards maintain, by any interlocutor of relevancy now to be pronounced.

I conceive also, that in justice to the pannel, and in justice to the opposite side of the bar, (who always meet me with liberality, and whom I wish to meet in the same manner), I should at once and openly state the nature of the defence we intend to maintain, and should say something of the history and character of the pannel. The pannel, after learning the trade of a weaver, in the county of Perth, went to Glasgow, where he continued a good many years. He acted as assistant foreman in a mercantile house, and during the whole of his engagement gave entire satisfaction to his employer. Seventeen years ago he entered into the Highland Corps of Volunteers in that city, and soon rose to the rank of serjeant, and continued with the corps till it was disbanded, and the volunteer associations were discontinued. He next went to Kilmarnock, where a great many weavers are occupied in working for the manufacturers of Glasgow; and, at the same time, he again gave his services to the public, by entering into the Local Militia Corps of that district, in which corps he continued down to 1812, when the period of its service expired. And not only was there no complaint against him during all these periods, as a man either troublesome or quarrelsome, but he maintained in Kilmarnock, during the period of nearly eight years he lived there, a character remarkable for sober habits, attachment to good order, and to the Government of the country; and last harvest, during a riot which occurred about a scarcity of meal, so far was he from taking any part in the riot, that when a house was to be attacked, he put himself forward along with two con-

stables in order to protect the house. He enjoyed this decent, respectable, and good character, till this charge of sedition was brought against him.

He does not deny that he attended the meeting in December. His means of subsistence, and those of his neighbours about him had been gradually declining. They had arrived, before the period I speak of, at, I hope, their worst state of distress; for he worked fifteen hours a-day for 5 s. a-week, and he is not only one of the best workmen, but so expert as to be able to execute the best work in the shortest time. And I will prove, that other workmen, who could execute as good work, but who were not so expert and expeditious as my client, were able to obtain only 3s. a-week. The pannel admits, that in this distress he began to think of the causes which had reduced his neighbours and himself from a condition in which they were prosperous aud happy to a state in which they could scarcely gain the means of subsistence; and he confesses he came to be of opinion, that the evils were partly owing to the excessive taxation which had been imposed on the country, and he and some others thought it right to call a meeting of the inhabitants of the place where he resided, to consider the propriety of a petition to the Legislature on the subject of their distress, its causes, and what appeared to them to be the proper remedies. They conceived, that to do this was their undoubted right; and it will not be denied on the opposite side of the bar that such was their right. There is no charge in the indictment that the meeting was illegal. It was a legal meeting which they were entitled to hold: it was for a legal purpose, and there was no harm in going there; and every person was entitled to state the grievances he felt, and in a manner that might induce the meeting to take constitutional measures for what he conceived would bring them relief. The pannel did not intend to take any part in the proceedings, nor to open the meeting as he did. But those persons who were to have opened the proceedings, were not equal to the task when the time came, and he was asked to undertake what was refused by the others. He went into a house in the neighbourhood, and hastily threw upon paper some observations which he wished to submit to the meeting. He did address the meeting, but he did not submit to it,—and there were not contained in that paper—what are cited as offensive expressions in the last part of the indictment. And as to the passage about a corrupt administration, which is cited in the indictment, it was in the manuscript, but was not spoken in the field. I admit that the manuscript afterwards went into the hands of the committee of the petitioners, at the re-

quest of the committee, in order to be printed in an account of the proceedings, but he had no concern in printing that account. With regard to the expressions which are charged as seditiously directed against the Legislature, we shall satisfy the Jury, and shall shew your Lordships, that giving them a fair construction, they contain nothing improper against any of the orders of the State, against the King, the House of Lords, or House of Commons. In sound construction, the expressions apply only to the administration for the time, and every person at such a meeting is entitled, if he thinks it right, to attack the policy and conduct of Ministers. I need not enter into the question, whether there has been mal-administration or not; but every person feeling himself aggrieved is entitled to state his grievances, and more particularly at a meeting convened for the purpose of applying for redress to the Legislature. This will not be denied. And what was done in consequence of this meeting, and of the speeches which were made there? Every thing was conducted in a regular and orderly manner; no injury was done to any property or to any person; the only consequence of the meeting was, that three petitions were resolved on, one to the Prince Regent, another to the House of Lords, and the third to the House of Commons; which last petition, when presented to that House, was ordered to be brought up and to lie on the table. This is proof that the petitions contained nothing that was offensive to the Prince Regent, nothing seditious, nothing offensive to the Houses of Parliament. Every thing that resulted was legitimate and proper. Taking the whole circumstances into consideration, it clearly appears, that the first passage objected to relates to the measures of Ministers; and I will prove even by witnesses for the Crown, that, so far was my client from employing any expressions disrespectful towards the head of the Government, that he did quite the reverse, and spoke with the utmost respect of the Prince Regent.

This being the situation of the matter, and my client having done nothing but what he was entitled to do, we shall show that the language he used was no other than what he was entitled, and completely authorised to use. In numerous petitions to Parliament, much stronger language has been used, and found not only to be not seditious, but to be not disrespectful to the House. What was the language held when Parliamentary Reform was first talked of at the Thatched-house-tavern? In the second resolution of that meeting it was said, "This meeting, considering that a general application by the collective body to the Commons House of Parliament cannot be made before the close of the present Session, is of opinion, that the sense

of the people should be taken at such times as may be convenient this summer, in order to lay their several petitions before Parliament early in the next Session, when their proposition for a Parliamentary Reformation, *without which neither the liberty of the nation can be preserved, nor the permanence of a wise and virtuous administration can be secured*, may receive that ample and mature discussion which so momentous a question demands." These are strong terms, and imply, that, without reformation in the representation of the people, the liberty of the subject is in danger; and if there is any doubt as to the meaning of the passage, look to the letter written by Mr Pitt to Mr Frost, in which it is said, that Reform "is essentially necessary to the independence of Parliament, and the liberty of the people." Down to this day strong language is always used in petitions on that subject and never objected to, except when the House of Commons is denied to represent the people, or matter is introduced against the House that is not relevant to the object of the petition. It has been laid down by constitutional lawyers and statesmen, by Lord Thurlow, by Mr Pitt and Mr Fox, that where the language is expressive of the grievance, however strong it may be, it is justifiable. I therefore submit, that, as it is competent to put such language into a petition to Parliament,—as such language has not been held objectionable in the House of Commons, it cannot be considered as seditious, or as tending to bring the Legislature into contempt. If such language is lawful in petitions to Parliament, then it must be held lawful in the speeches and resolutions made at meetings preparatory to such petitions. For there would be an inconsistency and absurdity in saying, that such language might be lawfully used in a petition, which if used in discussing whether it should be inserted in the petition would be unlawful. If it should be necessary, we shall make out to the satisfaction of your Lordships and the Jury, that the language, even as stated in the indictment, does not amount to sedition.

Having stated thus much, I conceive I have opened the nature of the defence we mean to plead, at sufficient length to make the opposite side of the bar aware of the nature of our defence, and I think it unnecessary to detain your Lordships any longer.

Lord Justice-Clerk.—It is a perfectly fair and distinct statement.

Mr Jeffrey.—I appear here in behalf of Thomas Baird. I suppose we are all agreed, that it is the right and province of

the Jury to take into consideration both the facts and the law of the case; first, to find whether the facts libelled are proved; and then to judge of the import of the facts so proved. We have no desire to quash the trial in any preliminary stage of the proceedings; and, notwithstanding some incorrect statements in the libel, as we do not wish to shrink from investigation, we shall not trouble your Lordships with any preliminary objections to the relevancy.

I have little farther to state in addition to the written defences. Mr Baird is a merchant in Kilmarnock, and has always maintained, not only an irreproachable but a respectable character in the estimation of both his superiors and equals. He also has served his country in a military capacity, and held successively commissions in different bodies of volunteers. In the last corps to which he was attached, he served down till the dissolution of the volunteer system in 1813, when the allowances which had been given to them were taken away; and his conduct, character, and sentiments, were always considered loyal, respectable, and praiseworthy.

He also had entertained ideas, the wisdom and propriety of which cannot here be made a subject of discussion: But to what he considered as defects in the Constitution, he wished none but constitutional remedies. A spectator of the general distress around him, and a participator in it, he believed that the evil was ascribable, at least in part, to a defective representation in the Commons House of Parliament; and he therefore thought it proper to present a respectful petition to the Legislature on the subject. He attended the public meeting which assembled for that purpose; but he did not take any part in the discussion, not being gifted with powers of oratory, nor wishing to obtrude himself on the public notice. He did however attend the meeting, and he heard the speeches,—which were not so violent as they have been represented. Some expressions were at the time reprobated by him, as tending to throw an odium on the general cause of Reform; and afterwards, when it was determined that some account of the proceedings should be published, and the orators gave in their speeches to the committee for publication, he repeated his objections against printing several passages which appeared to him to be improper; but he was overruled by a majority of the committee, who wished a full publication of the proceedings. As the funds of the petitioners were low, it occurred to the committee that some small pittance might be collected from the publication to defray the expences necessary for the preparation of the petitions. In this way, he consented to the publication, but at the same time protested against publishing any improper expressions; but not having any idea, (as such

a discovery indeed had not then been made in any quarter), that the expressions, though censurable, were of a nature to infer criminal consequences, he gave no critical attention to the minute contents of the publication, nor considered himself responsible for them. In order to forward the end in view, which was not to excite violence or sedition, but merely to raise money, it was determined that the members of the committee should distribute and sell as many copies of the pamphlet as possible; and my client agreed to sell some of them.

These are the facts of the case. As to the relevancy, much will depend on the interpretation to be given to the words libelled on. We do not think it necessary at present to say any thing farther on that point, as we shall prove that the expressions used were a good deal different from those libelled in the indictment. When the facts are disclosed in the evidence, we shall have a fitter opportunity for remarking on them.

Lord Advocate.—It is unnecessary for me to say any thing as to the candid statement which has been made on the other side of the bar. I admit that it is not only the right of the Jury, but that it is their bounden duty to say upon their oaths, whether the matter charged is sedition or not. In that I concur with my learned friends, and therefore I need say nothing more.

Lord Justice-Clerk.—Your Lordships have heard what has been said on behalf of the prisoners, and what has been said by the Lord Advocate. I have to ask your Lordships, whether you have any observations to offer on the relevancy of this indictment.

Lord Hermand.—I am of opinion that the indictment is relevant; and I think there can be little doubt on the point with those who hear me. The learned Gentleman who opened the defence admitted, that an attack on Parliament constitutes sedition; adding, that his client did not apply his expressions to the Legislature, but to the Ministers of the day. It may be so, but that is not what is stated in this indictment, to which alone I can attend at present. Part of the charge goes very deep. They met on pretence of a dutiful petition. Such pretences are always made. But your Lordships will attend to what we find stated: "Let us lay our petitions at the foot of the Throne, where sits our august Prince, whose gracious nature will incline his ear to listen to the cries of his people, which he is bound to do by the laws of the country." All this is extremely good; but what follows. "But, should he be so infa-

tuated as to turn a deaf ear to their just petition, he has forfeited their allegiance. Yes, my fellow-townsmen, in such a case, *to hell with our allegiance.*" Is that not sedition? Accompanied with an ouvert act, would it not be high treason? I have no hesitation in saying it would. Things may turn out differently on the proof from what is represented in the indictment; and I should rejoice to find it so. But, with regard to the speech and the publication, as here stated, is there not here a direct attack on the Legislature? Another passage is: "A House of Commons, but the latter is corrupted; it is decayed and worn out; it is not really what it is called; it is not a House of Commons." We are told this is only an attack on the Ministers. It is an attack on the House itself. Any petition containing such expressions, I always understood, would be rejected by the House of Commons. "At present we have no representatives; they are only nominal, not real; active only in prosecuting their own designs, and at the same time telling us that they are agreeable to our wishes." Is that not a broad attack on the Legislature? I shall be glad if the facts charged are not made out. They clearly amount to sedition as they are stated.

Lord GILLIES.—I concur in the opinion which I have now heard, so far as to think the indictment relevant. I have no doubt that it is relevant, and that the ordinary interlocutor must be pronounced. The indictment states, that at a meeting "attended by a great multitude of persons, chiefly of the lower orders," one of the pannels delivered a certain speech, which speech was afterwards circulated by the other prisoner. As to the nature and objects of the meeting, no information is given in the indictment. I must therefore hold it to have been a lawful meeting. But the libel goes on to state, that the pannels "wickedly and feloniously delivered a speech containing a number of seditious and inflammatory assertions, calculated to degrade and bring into contempt the confidence and affections of the people, and to fill the realm with trouble and dissention." This is certainly a charge of sedition; and, if the expressions cited in the indictment were delivered for the purpose there stated, they must be regarded as seditious. I need deliver no opinion farther at present, for the facts charged in the indictment, and, still more, the wicked and felonious intentions therein ascribed to them, are denied by the pannels. All these matters remain to be the subject of proof; and I would be arrogating to myself the province of the Jury and of your Lordship, if I said any thing farther at this period of the trial; for after the proof only can any satisfactory opinion be given on the subject.

Lord PITMILLY.—Soon after the printed copy of this indictment was put into my hands, I considered it with a view to the question of relevancy; and although the Counsel for the pannels have not disputed the relevancy of the indictment, but reserved to themselves the liberty of making such observations as may appear to them proper after a proof shall have been led, it would have been the province and the duty of this Court to stop the trial at this stage if it had appeared to us that the indictment is not relevantly laid. The defence has been very properly explained by the Counsel for the pannels; and I shall be happy if they make out that defence, either in exculpation, or in alleviation of the crime charged in this indictment. The only question at present is as to the relevancy of the indictment; and I have no hesitation in saying, that, in my opinion, it is relevant; and that, therefore, the ordinary interlocutor should be pronounced. The major proposition of the indictment chargse sedition in general terms. This is an unexceptionable charge, which has never been objected to, that I know of, but in one case, where the question regarding it was argued, and the objection was repelled. I allude to the case of Sinclair. It is known to every lawyer that sedition is acknowledged to be a crime recognised in the laws of this country. It is a crime, indeed, the trial and punishment of which must be coeval with Government. It is stated that the one pannel made a speech, which contains inflammatory remarks and seditious expressions, and that the other pannel circulated a pamphlet containing the speech and other seditious speeches. Paragraphs of it have been read, and I will not consume time with reading or commenting on any of them at present. No person who reads them can doubt, that the general nature of them is to excite commotion, and to prepare the way for resistance and for overturning the Government. That this is the general nature of the facts charged, no person can doubt. It would also be wasting the time of the Court to read the passages of the luminous commentary by Mr Hume on the crime of sedition, or to refer to the authorities and the precedents which have occurred in this Court. The Counsel for the pannels are correct in stating, that it is the province of the Jury ultimately to determine, not only as to the facts of the utterance and the publication of the expressions mentioned in the libel, but also with regard to the law, whether the expressions are to be held seditious or not. On that point there can be no doubt; and there never was doubt as to it at any period of the history of this Court.—The Court, however, in considering of the relevancy, must determine in the first instance, whether the expressions complained

of appear to them to be seditious, and to amount to the crime of sedition; and on this subject I cannot entertain the shadow of doubt.

Lord Reston.—I have no doubt as to the relevancy of the indictment. We have nothing to do at present with the truth of the statements in it. The only question now is, Whether the averments of the Public Prosecutor are put in proper shape and terms in this charge. The Jury will decide not only on the bare facts, but on the legal import of them, and will say whether the pannels are guilty or not of the crime of sedition. I have no doubt of the sufficiency of the averments made by the Public Prosecutor. He has averred circumstances which, if proved, amount to sedition. His averments amount to this, that what was said and published was not only calculated to produce pernicious consequences affecting the Government and Legislature, but must have been meant for seditious purposes. The indictment states that the purpose of the pannels was wicked and felonious. I consider that the speech said to have been delivered by one of the pannels is seditious in all its parts, and tends to excite discontent in the country. It was delivered in the open air, before a multitude of the lower orders assembled to hear it. The pannel is alleged to have stated that their sufferings were intolerable, and in coarse and calumnious language to have said, "A base Oligarchy feed their filthy vermin on our vitals, and rule us as they will." I consider this expression as tending directly to vilify the Government, and weaken the affections of the country towards its Legislature. In this speech he talks of successful resistance. He speaks of the Reformation, and of the resistance made to the English when their progress was stopped at Bannockburn. What were the feelings meant to be excited in the audience? He was attempting to degrade the Government, in order to lead his hearers to resistance; and, to give them confidence, he mentioned former instances of successful resistance. No doubt he proposes that the petition shall be laid at the foot of the Throne; and he pays a compliment to the Prince Regent. But what does he add? "Should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance. Yes, my fellow-townsmen, in such a case, to hell with our allegiance." Is there no intimidation; is there no threat intended by such language? It is true the expression "just petition" is employed; but who is to judge whether the petition is just? Were those at the meeting to judge? It was just saying, if our petition is not listened to, we are absolved from our allegiance. If the expressions shall be proved,

the language is seditious in a high degree. But this pannel is not only accused of expressing himself in this seditious manner while in the heat of addressing his audience, but he is also said to have delivered up the MS. of his speech in order to be printed. If this be proved, then not only did he use seditious language in the heat of his address, for which he might have been in a certain degree excusable, if momentarily not master of himself, but he afterwards did the utmost in his power to circulate this sedition. It was not likely that the speech would go farther than where it was delivered, without some effort to disseminate it, but he shewed his anxiety to obtain for it a wider circulation.—The indictment is clearly relevant as to M'Laren. It is likewise so as to Baird. He was present at the meeting. I do not say the purpose of the meeting was illegal. Baird became the trumpet of that meeting, and is said to have circulated an account of this very speech, which is charged as having been delivered by M'Laren. If the Public Prosecutor proves his averments, he makes out that a direct attack was made on the Legislature, and in strong terms on the House of Commons. "No nobleman—no clergyman—no naval or military officer, —in short, none who held places, or received pensions from Government, had any right to sit in that House." And again, "Is it any wonder, my friends, that this country is brought to its present unprecedented state of misery, when the rights of the people have been thus wantonly violated?" And in another place it is said, "We have these twenty-five years been condemned to incessant and unparalleled slavery, by a usurped Oligarchy, who pretend to be our guardians and representatives, while, in fact, they are nothing but our inflexible and determined enemies."—"They have robbed us of our money, deprived us of our friends, and abused our privileges."—"At present we have no representatives; they are only nominal, not real, active only in prosecuting their own designs, and at the same time telling us that they are agreeable to our wishes." If this is not a direct attack on a branch of the Legislature, I do not know what can be an attack on it. Our present business is only to judge of the relevancy of the indictment, and then a Jury will judge both of the law and the facts of the case. If they think neither of the pannels used these expressions, or circulated them, or if they are of opinion that they are not inflammatory and seditious expressions, it is their part, not ours, to find so.

Lord Justice-Clerk.—I entirely concur with the opinions which have been delivered as to what is the province and what

is the duty of the Jury in a case of this kind. It is not necessary for me to state any thing farther at present, than that no doubt can be entertained that this indictment is relevant.

Alexander M'Laren and Thomas Baird: Attend to the interlocutor of the Court as to the relevancy of this indictment.

"The Lord Justice-Clerk and Lords Commissioners of Justiciary having considered the criminal indictment, raised and pursued at the instance of his Majesty's Advocate, for his Majesty's interest, against Alexander M'Laren and Thomas Baird, pannels, they find the indictment relevant to infer the pains of law; but allow the pannels, and each of them, to prove all facts and circumstances that may tend to exculpate them, or either of them, or alleviate their guilt, and remit the pannels, with the indictment as found relevant, to the knowledge of an Assize. D. Boyle, I. P. D."

The following persons were then named to pass upon the assize of the pannels.

James Watson, of Saughton.
John Dodds, farmer at Saughton Mill.
John Drysdale, farmer, Clermiston.
David Pringle, of Blegbie.
John Stewart, of Binny.
John Calder, farmer at Drumcross.
John Russel, farmer at Mosside.
William Marshall, jeweller, South Bridge, Edinburgh.
Archibald M'Kinlay, haberdasher in Edinburgh.
John Baxter, confectioner there.
James Howden, jeweller there.
William Kennedy, glover there.
William Lindsay, wine-merchant, Leith.
John Gowan, wood-merchant there.
James Stoddart, wine-merchant, Edinburgh.

Lord Justice-Clerk.—Are the declarations of the prisoners admitted?

Mr Clerk.—Yes, my Lord.

EVIDENCE FOR THE CROWN.

Andrew Finnie sworn.—Examined by Mr Drummond.

Q. You are a merchant in Kilmarnock?—A. Yes.

Q. Do you know the Dean Park in the vicinity of Kilmarnock? A. I do.

Q. How far is it from Kilmarnock?—A. About half a mile.

Q. Do you remember that a public meeting was held at the Dean Park on the 7th of December last?—A. I do.

Q. Was there a great number of persons at it?—A. I think about 4000.

Q. A great number of the lower orders?—A. Yes.

Q. Do you remember that speeches were made at that meeting? —A. Yes.

Q. Who began, who opened the business?—A. Alexander M'Laren.

Q. Is that the person there?—A. It is.

Q. He made a speech?—A. Yes.

Q. What was the speech about, Sir?—A. About the business that the meeting was called for, which was for the purpose of deliberating on the best mode of petitioning for Parliamentary Reform.

Q. Do you remember any part of his speech, any of the words that he used?—A. Nothing particular, except one passage near the end.

Q. Repeat the passage as near as you remember it?

A. "We will lay our petitions at the foot of the Throne, (or let us lay, I do not remember exactly which), where sits our August Prince, whose generous nature will incline his ear to hear the cries of his people, which he is bound to do by the constitutional laws of the country; and we are thereby bound to give him our allegiance. But if he should be so infatuated as to turn a deaf ear to the general cries of his people, (or voice of his people, I do not know which,) to hell with allegiance."

Q. Is that the whole of the passage?—A. The whole of the passage, as far as I recollect.

Lord Advocate.—Q. I wish to know whether M'Laren in his speech stated that a number of resolutions had been drawn up by the committee, which were about to be read?—A. Yes, about the close of his speech, after the expression I alluded to, I think.

Mr Drummond.—Q. Did he recommend any body to be called to the chair of the meeting?—A. He said the committee unanimously recommended Mr Johnstone.

Q. And did he propose him to be elected to the chair?—Yes, I understood so.

Q. He was called to the chair?—He was called to the chair.

Q. Did you see Mr Johnstone in the other room to-day?—A. I did.

Q. Did you ever see a printed account of M'Laren's speech? —A. Yes.

Q. Was it in an account of the proceedings of the meeting?— A. In a pamphlet.

Q. Is that the pamphlet? (The pamphlet was handed to the witness.)—A. That is one of them.

Q. The rest are the same?—A. I understood so.

Q. Did you read M'Laren's speech?—A. Yes.

Q. Did it appear the same as that delivered at the meeting? A. No. There was a difference particularly as to that passage.

Lord Justice-Clerk.—Q. You mean the passage in reference to allegiance?—Yes, my Lord.

Mr Drummond.—Q. Will you point out to us particularly what is the difference between that printed passage and what he said?— A. There is one part which I think is omitted.

Q. What is that?—A. "And we are thereby bound to give him our allegiance."

Q. Do you observe any other difference?—A. I think that instead of "to their just petition," he said "to the general cries or voice of his people."

LORD JUSTICE-CLERK.—Q. "Just petition" are the words you see there?—A. Yes, my Lord.

Mr DRUMMOND.—Q. Any other difference?—A. The words "he has forfeited that allegiance," were never mentioned that I heard; and nothing that I remember but "to hell with allegiance."

Mr CLERK wished to know what the witness had said.

Mr DRUMMOND.—Q. The witness did not hear the words "he has forfeited that allegiance."—A. That is what I meant to say. "To hell with allegiance," is all that I heard at the meeting.

Q. Had you any charge as to printing that pamphlet?—A. I was appointed to a charge about the printing, but I never acted to it.

Q. Who had the charge along with you?—A. Mr Baird.

Q. And who else?—A. Mr Walter Andrew.

Q. A writer?—A. Yes.

Q. You took no charge, though you was appointed to superintend the printing?—A. I was appointed, but never was at the meeting called for the purpose.

Q. How were you appointed to that charge?—A. By the committee.

Q. Was Baird a member of the committee?—A. He was.

Q. Do you know who printed the statement of the proceedings?—A. It was given in to Mr Crawford, I understood.

COURT.—That will not do.

Mr DRUMMOND.—Were you ever present at the printing?—A. I was in Crawford's shop.

Q. Did you ever get any copies of the printed statement from Crawford?—A. I did get from Crawford printed copies.

COURT.—Q. Did you buy them?—A. I was to pay for them.

Lord HERMAND.—Q. Then you did buy them?—A. I did not buy them particularly.

Mr DRUMMOND.—Q. Do you know whether Baird sold any of them?—A. He did.

Q Did Baird ever tell you so?—A. He said he got quit of them; but he did not say he sold them.

Q. Did he say he got quit of them all?—A. He said so.

Q. Did he ever get any from you?—A. About four dozen.

Q. They were of those you got from Crawford?—A. They were.

Q. Did you give him all you had?—A. No. I had eleven or thereby left.

Q. Had you any conversation afterwards with Baird about those remaining?—A. I am not certain if I had. I do not recollect at present if I had.

Q. I think you said Baird mentioned he had got quit of all his. Did he make any remark on your not having got quit of yours?—

A. I said I had still eleven or thereby; and he seemed surprised, as he had got quit of all his.

Lord Hermand.—Q. What did you understand by getting quit of them?—A. The committee had liberty to get what they wanted; and copies were given to them when applied for.

Court.—Q. The witness does not understand the question. Was any price taken for them?—A. I understood they were to be 4d. each; that this was fixed by the committee.

Q. Whether were they disposed of by sale or by gift?—A. I do not know whether Baird sold them or not. He was to pay for them.

Lord Advocate.—Q. Did you ever go to Crawford's with Baird to inquire after the publication?—A. I did.

Q. What did you ask?—A. We asked if any of the pamphlets were ready.

Q. Which of you asked?—A. I am not certain.

Q. You both went for that purpose?—Yes.

Cross-examined by Mr Jeffrey *for Thomas Baird.*

Q. You have mentioned that you two were both members of the Committee for arranging about this meeting?—A. Yes.

Q. Were there many other members?—A. From 20 to 30, I think.

Q. These were constituted before the meeting was held?—A. Part. There were more added afterwards.

Q. Was any notice given to the Magistrates about the meeting?—A. Mr Baird and I were nominated to call upon the Magistrates, to inform them of the meeting.

Q. You went?—A. I did not. Mr Baird said he went.

Q. Did he report that the Magistrates had no objections to the meeting?—A. He did.

Q. There was no interference of the Magistrates?—A. None.

Q. Were you present at the meeting?—A. Yes.

Q. Was Mr Baird there?—A. He was.

Q. Did he speak any?—A. No.

Q. Did you hear him make any remarks expressing satisfaction or dissatisfaction on what was said?—A. I heard him make a remark about the passage I was talking of in Alexander M'Laren's speech concerning allegiance.

Q. What did he say?—A. He said it was a pity it had been spoken.

Q. He disapproved of it?—A. Yes.

Q. You said you, Mr Andrew and Mr Baird were appointed to take charge of the printing of an account of the proceedings?—A. Yes.

Q. Was any motive alleged for the printing?—A. It was for defraying the expences attending the meeting.

Q. Was there any discussion at the meeting of the Commi[illegible]ce about the propriety or impropriety of printing the whol[illegible] of what had been so stated at the public meeting?—A. Y[illegible]

Q. Did any body object to the printin[illegible], there was.

[illegible] all?—A. I think two

were not for printing at all; Mr Johnston, and Alexander Maclaren.

Q. Was M'Laren a member of the committee?—A. Yes.

Q. Did Mr Baird take any part in that discussion?—A. I do not remember that he did.

Q. Was there any discussion about the propriety of printing certain parts?—A. Yes.

Q. Did Mr Baird take any part in that discussion?—A. He did.

Q. Was he for printing all the words?—A. No; he was not.

Q. What words did he object to, or what passage?—A. I do not remember any other passage than that about allegiance in M'Laren's speech.

Q. What did he say as to that passage?—A. That he would be inclined to keep it out altogether.

Q. Did he say any thing else about it?---A. I do not remember particularly any thing else he said.

Q. Was that proposition of his adopted by the committee or not?—A. No; it was not.

Q. Did it appear to you that Mr Baird approved or not of that passage?---A. He disapproved of that passage, and wished it to be left out.

Q. Did you understand that all the members of the committee were to take copies of this statement, to forward the sale of it, and to account for the 4d. for each copy?—A. Yes. The committee were at liberty to get what number they wanted, for the purpose of defraying the expences.

Q. Did they all get copies?—A. I do not know who did and who did not.

Q. Mr Baird keeps a shop?—A. Yes.

Q. Did all the members of the committee keep shops?—A. No.

Q. What kind of a shop is Mr Baird's?—A. A grocer's shop.

Q. Has there been any other general meeting since this in Dean Park?—A. None that I know of.

Q. Certain resolutions were adopted which are to be found in the printed statement, and petitions to Parliament were, in conformity to them, prepared and forwarded?—A. Yes.

Q. Was there any disturbance or tumult at Kilmarnock since that date?—A. I do not recollect of any.

Q. Do you recollect any disturbance recently before that, a riot about meal?—A. Yes.

Q. Before the public meeting took place—about autumn?—A. Yes; I do not know the exact time when it was.

Lord Advocate.—Q. You said that Baird disapproved of printing the passage about allegiance:—do you remember whether M'Laren said any thing, and what did he state about that passage?—A. I think he said, that if the committee thought there was any thing wrong, he would rather it were kept out altogether.

Q. That was as to the passage in his own speech?—A. Yes.

Q. When Mr Baird objected to printing the passage, did he state his reasons why he thought it an improper passage to be printed?

—A. The reason was not stated there, that I remember; but when he and I were talking of it by ourselves.

Q. And what did he say?—A. He said to me it was a very indecent expression.

Q. He stated nothing to the committee of his reasons?—A. Not that I remember.

Cross-examined by Mr GRANT *for Alexander M'Laren.*

Q. I ask the witness to look at the printed speech, and find these words, "The fact is, we are ruled by men only solicitous for their own aggrandisement?"—A. I see them.

Q. Were these words spoken?—A. I do not remember.

Q. "And they care no farther for the great body of the people, than they are subservient to their accursed purposes." Was that spoken?—A. I do not remember. I paid almost no attention to any part of the speech, except that about allegiance.

Q. How did it happen that you remember that passage so particularly, and none of the rest of the speech?—A. It struck me particularly,

Q. Then you do not mean to pronounce an opinion as to any thing that was uttered by M'Laren, except the passage about allegiance? A. No.

Q. Do you remember what passed about the opening of this meeting---who asked M'Laren to open it?—A. I do not remember who asked him.

Q. Did he volunteer, or was he requested to open the meeting? —A. He was backward to open the meeting.

Q. And he was asked by the committee?—A. He was asked by the committee.

Q. When was he asked?—A. At a meeting of the committee.

LORD ADVOCATE.—Q. How many days before the meeting?—A. I am not certain.

Q. It was some days?—A. It was some days, I think.

Mr CLERK.—Q. Are you sure it was some days before the meeting?—A. I am certain; for immediately or the night before the meeting, he said he was in doubts whether he would do it or not.

Q. Did you use any particular means to keep the passage about allegiance in your recollection?—A. It struck me so forcibly at the time—the language was so strong, I kept it in my memory.

Q. You mentioned other passages. What part of the passage do you allude to just now? Did you consider the whole passage strong?---A. The word *hell* struck me. That was the particular part I thought was wrong. I did not consider any thing wrong in the rest of it at the time.

Q. Did you write down the passage?---A. No.

Q. Are you quite confident of your recollection of the whole of the passage?---A. I am quite confident it was very near to what I repeated. Whether the words, "cries," or "voice," were used, as I said before, I am not sure of; but I am confident as to the rest of the passage.

Lord Advocate.—Q. At the meeting, had M'Laren any paper with him?—A. I saw none.

Q. Did you ever see any paper with his speech on it?—A. Never.

Q. Did you ever hear him speak of the terms of it after it was printed?—A. I recollect of him saying repeatedly, that the passage about allegiance was a quotation from Shakespeare which came into his mind.

Q. When did he first say that? Was it at the meeting of the committee?—A. I don't recollect of his ever saying that at the committee; but I have heard him repeatedly say so.

William Merrie sworn.—Examined by Mr Drummond.

Q. Are you a writer in Kilmarnock?—A. Yes.

Q. Do you remember being at a public meeting held near Kilmarnock on the 7th December last?—A. Yes.

Q. Do you remember the speeches made at that meeting?—A. Part of them.

Q. Who made the first speech?—A. Alexander M'Laren.

Q. Is that the man behind me?—A. Yes.

Q. Do you remember any part of his speech?—A. Very little of it.

Q. Do you remember any words near the conclusion of it?—A. Yes.

Q. Can you repeat them?—A. The hindmost part of it was, "hell with," or "for such allegiance."

Q. What allegiance was that he was speaking about?—A. If I remember right, he was wishing the people to address their August Sovereign; and he meant their allegiance to him.

Q. Did he give any reason why this allegiance was to go to hell?

Mr Clerk.—He has not said that.

Q. Mr Drummond.—Why did he apply the expression to such allegiance? What did he say?—A. If I remember right, it was, "if he turned a deaf ear to the voice of his people."

Q. Did he say any thing about petitioning?—A. Yes, he wished the people to petition their August Sovereign.

Q. What more do you say of this speech?—A. I do not remember more.

Lord Hermand.—He has explained enough I think.

Mr Drummond.—Q. Do you remember any other part of his speech?—A. No.

Q. Did he use any words to shew what his meaning was when he spoke of the voice of the people?—A. Not that I remember of.

Lord Advocate.—Q. You said he wished the people to address their August Sovereign; and then you stated he said, "if he turned a deaf ear to the voice of his people." Did he add any thing?—A. I do not remember whether he added any thing or not.

Q. After he used the words, "if he turned a deaf ear to the

voice of his people," did he say any thing or not about "to hell with such allegiance?"—A. That came afterwards.

Lord HERMAND.—Q. Did he mention in what way the voice of the people was to be expressed?—A. No, he wished the people to petition.

LORD ADVOCATE.—Q. Did you, after this meeting, see a publication called "Account of the Proceedings of the Public Meeting of the Burgesses and Inhabitants of the Town of Kilmarnock, held on the 7th December 1816, for the purpose of deliberating on the most proper method of remedying the present distresses of the country, with a full report of the speeches on that occasion?" —A. I never saw it, except one day lying on the table before the Sheriff.

Mr GRANT.—Q. Do you know what was the purpose of the meeting?—A. It was for the purpose of petitioning the Sovereign.

Q. Do you know if, in point of fact, petitions were drawn up and signed by the persons who were at the meeting?—A. I could not say.

Q. Did you sign any of the petitions yourself?—A. No.

Q. Did you understand from what passed that it was the intention of M'Laren to induce the people, and you as one of them, to petition the Legislature, or to excite violence and disturbance?

LORD ADVOCATE.—I object to this question.

LORD JUSTICE-CLERK.—The understanding or opinion of any witness is not to be listened to in evidence.

Q. What did you collect to be the object of M'Laren's speech?

LORD ADVOCATE.—If this course of examination go on, there can be no objection to my reexamining the witness. I did not finish my examination of him, but on the idea that I could not put such questions.

Mr CLERK.—We have put a question, and we should not be interrupted. The Lord Advocate puts in his claim to put such questions. But he must not interrupt us in order to make an examination himself.

COURT.—He has no such intention.

Mr GRANT.—Q. I put this other question: In point of fact, did this speech excite the people to commotion or disturbance?—A. No.

Q. There was none upon that occasion?—A. None.

Q. Was it the tendency of M'Laren's speech, from what you observed, and from what passed, to create commotion or disturbance, or to induce petitions to be sent to the Prince Regent and the two Houses of Parliament?—A. It was to induce the people to petition the Prince Regent and the two Houses of Parliament.

Q. Did he express himself in any way with regard to the person of the Prince Regent in that speech?—A. Not that I remember of.

Q. When he advised them to lay their petitions at the foot of the Throne, did he say any thing of the August Prince?—I do not remember any thing of the Throne; but he mentioned his August Prince.

Q. In what terms?---A. In favourable terms.

Q. In terms perfectly legal and becoming a good subject?—A. Yes.

HUGH CRAWFORD sworn.--Examined by Mr SOLICITOR-GENERAL.

Q. Are you a printer at Kilmarnock?—A. Yes.

Q. Do you remember a meeting held in December last in the neighbourhood of that town?—A. Yes.

Q. Was a MS. account of the proceedings at that meeting afterwards brought to you to be printed?—A. Part of it.

Q. Did you attend the meeting?—A. No.

Q. Look at that?—(Pamphlet handed to the witness.)—A. That was printed in my office.

Q. Who brought it?—A. The part I saw was brought by David Andrew, I think.

Q. Was any body in company with him?—A. I think not.

COURT.—Q. Has Andrew any more names than one?—A. I do not know.

Mr SOLICITOR-GENERAL.—Did you see him in the other room to-day?—A. I did.

Q. Who attended the press while this MS. was printed?—A. I did not see, as the printing-office is at a distance from the shop, and I was only occasionally there.

Q. Did Thomas Baird attend the printing?—A. I think I saw him once or twice; I am certain once.

Q. Are you able to say whether this publication is a true copy of the MS. that was brought to you?—A. I cannot say.

Q. Who printed it?—A. Thomas Murray, a man whom I employ.

Q. Have you been paid for the printing?—A. No.

Q. Who is to pay you?—A. The persons who employed me.

Q. Who are they?—I look to Mr David Andrew, Mr Andrew Finnie and Mr Baird.

LORD ADVOCATE.—Q. What was done with the publication after the printing?—A. Copies were taken from me in quantities: Mr Baird got a quantity, and Mr Finnie and others got quantities.

Mr SOLICITOR-GENERAL.—Q. How many copies were printed?—A. About 400 I think.

Q. How many did Baird get?—A. I cannot say.

Q. Can you say about what number?—A. There might be four, five or six dozen.

LORD ADVOCATE.—Do you know M'Laren?—A. Within this short time.

Q. Did he ever complain of his speech being printed inaccurately?—A. No, I never spoke to him in my life, to my knowledge.

THOMAS MURRAY sworn.—Examined by Mr DRUMMOND.

Q. Are you journeyman to Mr Crawford?—A. Mr Crawford is my employer.

(The pamphlet was shewn to the witness.)

Q. Was that printed at Mr Crawford's printing-office?—A. Yes.

Q. By you?—A. Yes.

Q. Is it a correct copy of the MS. given you for the purpose of being printed?—A. There were some alterations in the proofs.

Q. Corrections of the press?—A. Yes.

Q. What alterations?—A. Typographical errors; and perhaps in some sentences grammatical alterations.

Q. Were there any alterations of the sense?—A. None that I remember of.

Q. Who gave in the MS?—A. The first part I received from Mr Crawford.

Q. Who gave you the rest?—A. I received it at different times.

Q. From whom?—A. It was sometimes given in when I was not in the office, and sometimes when I was in it.

Q. Who gave you any part of it?—A. Mr David Andrew.

Q. Did Mr Webster bring any of it?—A. Once, I remember.

Q. Who came to superintend the printing and to inquire after it?—A. That person.

Q. Any body else?—A. No.

Q. Mr Baird?—A. He was twice or three times at the utmost.

Q. For the purpose of inquiring about the publication?—A. He was several times in the office.

Q. What did he do when he came?—A. He came to the office along with Mr David Andrew to look over the first proof.

Q. Did they make any alterations?—A. One was proposed by Mr Baird.

Q. What was it?—A. I do not know.

Q. Can you point it out in the publication?—A. No, for I never had it in my hand but now and before the Sheriff of Ayr.

Q. Was any alteration made in consequence?—A. None.

Q. Why was it not made?—A. It was a grammatical alteration that was proposed, I thought the alteration proposed was wrong, and I had a right to make the pamphlet grammatical.

Q. What became of the MS. from which the publication was printed?—A. It went as all of them do,—it was destroyed.—I was not desired to preserve it.

LORD ADVOCATE.—Look at the passage on page 7. "to ——— with allegiance," was that blank in the MS.?—A. If I remember rightly, that part of the MS. was erased, written over again, then erased and interlined; and I do not know but I ordered my apprentice to leave the blank, as I could not make it out. To make the sentence join properly, I left it blank.

Q. Did Mr Baird, when he came and looked over the MS., object to the blank, or state any thing?—A. He never looked over it.

Q. You said Mr Baird came with Mr Andrew and looked over the first proof. Did he make any observation about the blank there left?—A. That was not in the first proof;—the proof I spoke of was the proof of the first pages of the pamphlet.

Cross-examined by Mr JEFFREY *for Thomas Baird.*

Q. Were the proof sheets sent to any one to be revised?—A. They were.

Q. To whom?—A. To Mr David Andrew.

Q. Any to Mr Baird?—A. Never, to my remembrance.

(Part of the MS. was shewn to the witness.)

Mr DRUMMOND.—Q. Did you ever see that before?—A. I never saw it before; it never came into my hands.

Cross-examined by Mr GRANT *for Alexander M'Laren.*

Q. Was any part of the MS. pencilled?—A. I do not remember; the MS. was very imperfect, and was partly well and partly ill written; it was partly in quarto and partly in folio, in different hands.

Q. Do you remember the part that contains the blank, what size of the paper was there?—A. It was folio. I remember it quite well. There were two sheets of foolscap paper written on without being folded.

Q. Was it of the size of this, folded and written on as this?—(A sheet of folio paper shewn the witness.)—A. Yes.

JAMES JOHNSTONE sworn.—Examined by Mr SOLICITOR-GENERAL.

Q. Do you remember of a public meeting at Dean Park, near Kilmarnock?—A. Yes.

Q. Do you know that there was a committee to prepare and adjust the business for that meeting?—A. I do.

Q. Of whom did it consist?—A. I really cannot tell—of a number of persons; of myself for one.

Q. Was Mr M'Laren one?—A. Yes.

Q. Mr Baird?—Yes.

Q. Were any resolutions prepared before the public meeting?—A. Yes.

Q. Were they read to the meeting which took place?—A. Yes.

Q. You attended that meeting?—A. I did.

Q. Who first spoke?—A. Alexander M'Laren.

Q. Was there any meeting of this committee after that public meeting?—A. Yes, that evening.

Q. For what purpose?—A. The particular purpose was to consider whether they should print their resolutions and speeches.

Q. Who attended that meeting? Were the pannels there?—A. I think so.

Q. Was it resolved there to print the speeches and resolutions?—A. Yes.

Q. The several speakers gave in copies of their speeches?—A. I believe so, but I did not see them given in.

Q. Did you see any thing at all given in?—A. Nothing but my own speech.

Q. Were you present when the proofs of the proceedings were revised?—A. I was not present at the revision of any of them.—

(The pamphlet was shewn to the witness.)

Q. Is that the publication of the proceedings which took place at Dean Park at the time you mention?—A. I suppose so.

Q. By whom does it appear to be printed?—A. By Hugh Crawford.

Q. Was it resolved at the committee that he should be the printer?—A. Not particularly.

Q. Do you know the MSS. were sent to him?—A. I do not know.

Q. Did you never read the pamphlet?—A. No.

Q. Not even your own speech?—A. No; I gave it to Mr Walter Andrew to revise.

Q. Are these the resolutions that were read to the meeting?—A. I have glanced at them. I cannot say particularly they are the resolutions, but generally I believe so.

Lord Advocate.—Q. You are acquainted with M'Laren?—A. Yes.

Q. He was a member of the committee?—A. Yes.

Q. You have of course had conversations with him about the meeting and the publication?—A. Yes, in a general way.

Q. Did you ever hear if Baird or he complained of inaccuracy in the statement given of the proceedings?—A. Yes; Alexander M'Laren.

Q. What did he say?—A. That one sentence at the end of his speech in the printed account, and cited in the indictment, was not in the original MS. He said it runs in this way: Speaking of the petition being presented to the Prince Regent, "He hoped he would lend his gracious ear to it, as he was bound to do by the Constitution; but if he did not do so, then to hell with allegiance." I think he said this was not in the original speech.

Q. Did you hear his speech?—A. Only the sound of it.

Q. Did you hear any of the words of it during the meeting?—A. I cannot say I did.

Q. What did M'Laren say was the inaccuracy?—A. He complained of the latter part of the sentence altogether being in it at all, because it was not in the MS.

Q. Did he complain of the word "hell?"

Mr Clerk.—I object to the question. There is no such word in the publication.—(The witness was ordered to withdraw.)

Lord Advocate.—The drift of the examination I was carrying on at the time, was to bring out of the witness what was the conversation between him and M'Laren—whether M'Laren objected to certain parts of the publication which he is alleged to have done. The witness said he never read that publication. I am entitled to put the question, in order to ascertain the witness's recollection; and particularly, whether M'Laren complained of any

word being in the MS. I submit that the question I put is competent, viz. whether M'Laren complained of "hell to allegiance" being in the MS. The thing, I admit, is now irremediable, because my learned friend has instructed the witness by stating that there is no such word in the publication; but I say it was irregular in my learned friend to interrupt me and thus to prepare the witness.

Mr Clerk.—Nobody is more competent to put regular questions to witnesses than my Lord Advocate, but I cannot permit him to proceed irregularly. What was the question put? Whether M'Laren complained of hell being in the MS. That was implying that the words were in the printed pamphlet, and nobody is entitled to suggest a false fact to a witness. No fact must be assumed in putting a question to a witness.

Lord Advocate.—I wish the Court to keep in recollection what the question was to which I wished to get an answer—whether or no M'Laren complained of being misrepresented by "hell" being in the printed copy. My friend now admits that the question was not irregular.

Mr Clerk.—The question is not as it was put originally.

Lord Advocate.—I put it to the Court that such was the question.

Lord Justice Clerk.—I do not see any thing out of form here.

Lord Advocate.—The opposite Counsel were out of form in interrupting me, and they have rendered the question useless. If they again interrupt me, let them first desire the witness to be removed.

(Witness brought back.)

Q. In what way did he say he was misrepresented?—A. I did not say so. I say he complained of the latter part of the sentence being put in, because it was not in the MS.

Q. Then he did not complain of being misrepresented?—A. Yes, in one word that he did not pronounce—the word "their," or "our," which comes in before "allegiance."

Q. You are looking at the printed statement. Did you not say that you had not seen it before?—A. I did not say I had not seen it; I said I had not read it.

Lord Justice-Clerk.—He says M'Laren complained of being misrepresented with respect to a word before "allegiance," and he is entitled to look at the pamphlet.

A. As far as my judgment leads me to take notice, he complained of any thing intervening between the word "to" and "allegiance," because it was not in his original MS. He never intended to say it; it was merely a word of some play that occurred to his memory, and he let it out.

Mr Solicitor General.—Q. Did he tell you, then, how the passage should have been printed?—A. He told me the identical words he used. The last words of the sentence were, "to hell allegiance."

Lord Advocate.—Q. Did he complain of the passage as stated in the indictment?—A. Yes; he gave the indictment to me to read.

Lord Justice Clerk.—He said the passage was not correctly given either in the indictment or the printed account?—A. Exactly.

LORD ADVOCATE.—Q. How long is it since he made this complaint to you?—A. I think the very day he received the indictment.

Cross-examined by MR JEFFREY *for Thomas Baird.*

Q. You mentioned that both of the pannels were members of the committee with you. Was Mr Baird at the public meeting?—A. Yes.

Q. Did you then, or at any other time, hear him make any remarks upon M'Laren's speech?—A. No.

Q. Did you not hear him at any other time make any remarks?—A. Yes, I have heard him several times complain, and say it was a pity the last sentence had been put in.

Q. Spoken, or put in?—A: It was a pity it had been spoken at all.

Q. Were you present at the meeting about the printing?—A. Yes.

Q. Was any objection made to that passage?—A. I was against the printing altogether, not that I thought there was any thing wrong in the publication; but judging from my own, I supposed all the speeches were made up in a hurried way, and would not stand the scrutiny of the public eye.

Q. Do you remember Mr Baird making any objections to the publication?—A. I do not particularly.

Q. Do you know any thing of the reasons stated for or against the printing?—A. The publication was to defray the expences incurred at the public meeting.

Q. Was the sale of the publication entrusted to any particular persons?—A. To the committee in general.

(The MS. of the witness's speech was shewn to him.)

Q. Was that written before or after the meeting?—A. Before.

Q. You officiated as chairman at the meeting?—A. Yes.

Cross-examined by MR GRANT *for Alexander M'Laren.*

Q. You are a muslin agent?—A. Yes.

Q. For any of the Glasgow houses?—A. Yes.

Q. From that circumstance, have you an opportunity of being much acquainted with the situation of the manufacturers in Kilmarnock?—A. I think so.

Q. At present now, what may the most active weaver be able to clear in the course of a week?—A. At present things are rather better than they were some time ago. From a calculation I have made, an active weaver may at present gain about 5s. 6d. a-week.

Q. What might he be able to gain a-week on an average of the last year?—A. From 4s. to 4s. 6d.

Q. How many hours work a-day was necessary to gain this sum?—A. At least from 14 to 15 hours.

Q. You have compared this period of distress with better times? What were then the general wages?—A. About 12s. a-week—from 12s. to 14s.

Q. I need not therefore ask if there was the greatest possible distress at Kilmarnock?—A. There can be no doubt of it.

Q. You talked of the meeting which was held near Kilmarnock. What was its object?—A. Solely to petition the Prince Regent and both Houses of Parliament, to consider the grievances of the country. It was our opinion, that one great reason of them was the defective state of the representation, more particularly in our part of the country; and therefore we particularly recommended attention to that.

Q. Was any other objects in view besides petitioning—any other means thought of in order to obtain redress of these grievances?—A. None.

Q. Was any conversation ever held in your presence by Maclaren that tended to any other purpose than what is in the petition?—A. None.

Q. Did you ever hear from him any hint, that induced you to believe he entertained disloyal opinions, or seditious intentions?—A. Never.

Q. Have you occasion to know whether he was of a peaceable and orderly disposition and habit of life?—A. I never heard or saw any thing to the contrary.

Q. How long have you been acquainted with him?—A. These eight years.

Q. Does it consist with your knowledge he was a member of a Volunteer Corps at Glasgow?—A. I have heard that he was.

Q. Do you know of his being in the Local Militia, or Kilmarnock Volunteer Corps?—A. He was in the Rifle Corps at Kilmarnock.

Q. Was the public meeting conducted in an orderly and peaceable manner?—A. I considered it so. It was with no other intention I undertook the management, and that any gentleman will see from my speech.

Q. What was the state of the weather?—A. It was very coarse. There was hail, and wind, and snow.

Q. Perhaps that was the reason you did not hear the speech?—A. That was the reason; I just heard the sound, but not the words.

Q. It was not weather well calculated for any person hearing a speech distinctly?—A. It was very bad indeed.

Q. You have said you were present at a meeting of the committee, when it was proposed to print the proceedings, and that M'Laren was there, and that you objected to the printing. Did any other person object?—A. Mr M'Laren objected particularly to the printing of his speech.

Q. What passed upon that occasion?—A. There was a great deal of altercation as to the printing; and it was at last agreed that those who had made speeches should give them to a committee appointed to superintend the printing.

Q. Did Mr M'Laren still object to his speech being printed?—A. He said, though the rest were printed, he did not see any reason for printing his, as it was made up in a hurried manner, and that he had no intention that morning of speaking at all.

Q. Were you present at any meeting of the committee previous to the public meeting, for arranging about the public meeting?—A. Yes, I was at them all, I think.

Q. At a previous meeting were any steps taken as to appointing a person to open the proceedings at the public meeting?—A. It was discussed; and after a great deal of discussion, Maclaren agreed, that if no other person came forward, he would do it; and he mentioned to me since the meeting, he had no idea he should open the business, as another person had given a kind of promise to do it, and that person not appearing on the field, he went to a public-house and prepared some observations. I saw him the night before the meeting, when he told me he had hopes another person would open it.

Q. Do you know who that other person was?—A. Yes, M'Laren told me.

Q. Was the name of that other person publicly mentioned?—A. No, it was not.

Q. Was either of you a member of the committee that superintended the printing?—A. None of us.

Q. Do you know any thing of a disturbance that took place about meal previous to the meeting?—A. I heard of it.

Q. Were you at Kilmarnock at the time?—A. I was about two shops from it at the time. I did not consider it a mob or disturbance.

Q. Have you occasion to know how M'Laren conducted himself upon that occasion?—No, I have not.

Q. You said you have known him eight years. Did you ever know him to be connected with any body of men assembled for any seditious or illegal purpose?—A. Never, so far as I knew him, otherwise I would never have kept company with him.

Q. You are an extensive agent?—A. There are some much more extensive than I am.

Q. Have you ever heard M'Laren was a member of any society for any purpose?—A. Of none but this committee.

Court.—Q. Does this committee still continue?—No, the committee does not continue.

Mr Grant.—Was this committee open for any person to go to?—A. We never had a meeting which was not open; and there were always some others present besides the members of the committee. Any one was asked to attend.

Q. Were any precautions taken to keep your proceedings secret from the Magistrates?—A. None.

Q. Was it ever hinted or proposed that it would be necessary to keep the proceedings secret from the Magistrates?—A. Never.

Q. In point of fact, were the Magistrates made acquainted with the intention of the meeting?—A. I believe so. I called and told Mr Baird I would not attend unless the Magistrates were made acquainted with the intended meeting. He was appointed to tell them. Mr Baird said he had called on the Magistrate, but had not found him, and he said he would go again, and I understood from him he did go again.

Q. Was there, according to your knowledge, any obstruction offered by the Magistrates to the meeting?—A. I saw none.

Q. Do you know whether, in point of fact, petitions, founded on the resolutions adopted at that meeting were prepared to the Prince Regent and the two Houses of Parliament?—A. They were.

Q. Did you read them over?—A. I think nearly. I heard them all read.

Q. Does it consist with your knowledge they were forwarded? —A. I was told so by Mr Baird. I read in the public papers that they were presented.

Q. If I were to show you a printed copy of the petition, would you remember it?

Lord Advocate.—Nothing is said in the indictment about the petition.

Mr Clerk.—Much will be said in defence upon this very fact about which we are examining the witness.

Lord Advocate.—Defences have been given in for the pannels, and no notice is taken in them of productions being to be made. Your Lordships will take notice of this. I only wish you may keep this in view.

Lord Justice-Clerk.—We must receive whatever may go to exculpate the pannels.

(The account of the petition in a printed copy of the Journals of the House of Commons was handed to the witness.)

Mr Grant.—Q. Were these the terms of the petition?—A. As far as my judgment serves me, that is the substance of the petition.

Q. Have you any doubts this is the same petition?—I have none at all. None can suppose my memory is such as to say these are the identical words.

Q. Your answer is quite proper. I have put a cross at the margin. Say whether you recollect particularly that the words there form part of the petition?

Lord Advocate.—I consented to a few questions being put to the witness, but I now object to any farther questions that are not cross.

Mr Grant.—I am just finishing this part of the examination. I have only to read a passage, and ask the witness whether he remembers it. "When we came to discover those alarming facts, our hearts stood appalled, as if we had trod on a volcano: We looked around for the cause, and we found it in the very corrupt and defective *Representation of the People in Parliament*. We found, that the Commons' House, whose members ought to be chosen annually by the people—should be the organ of the people's voice—the guardians of their rights and of the public purse, had lost all control over the servants of the Crown, and had become subservient to the will of the Minister of the day: That the great body of the people are excluded from their elective franchise—that a majority of your Honourable House are returned to Parliament by proprietors of rotten boroughs, the influence of the treasury, and a few other individuals; and that seats therein are bought and sold like tickets for the Opera."

Q. Were these the words in the petition?—A. I think these identical words were in the petition which was forwarded to Parliament, and ordered to lie on the table, I believe.

Q. You remember being shewn this printed publication. You said M'Laren complained of the latter part of his speech being inserted, because it was not in the manuscript?—A. Yes, I did.

Q. Say what part was not in the manuscript?—A. I cannot say what were the words he spoke at the meeting. What he said to me was, that he concluded with a line of a play, and it was "to hell allegiance."

Mr Clerk.—Q. Did he say that any part of the passage before that was not in his manuscript?—A. He just said the latter part of the sentence was not in the manuscript.

Q. You said you had a conversation with him when he shewed his indictment, and that he complained as you have stated. Had you any other conversation with him on the subject than on that occasion?—A. Perhaps there might be two or three, but to the same purpose.

Q. Did he attempt to influence you as to what evidence you should give at this trial?—A. Neither of us considered I should be called on to give evidence. I did not know what he had spoken, nor about the selling of the pamphlets.

Lord Advocate.—Q. We had a very eloquent petition read. By whom was it composed?—A. I do not know.

Q. Did any member of the committee compose it?—A. The committee for superintending the printing were appointed to compose it, namely, Thomas Baird, W. Finnie, W. Andrew, D. Andrew, and W. Webster.

Q. They produced it to you as their own composition?—A. It was produced and read at the meeting.

Q. Did they say any thing that led you to suppose that it was not their own composition?—A. I do not think they did.

Q. Did they say from whom they got it?—A. They did not. There was some amendment made upon it.

Q. Upon your oath can you state that none of them said to you any thing about the getting of the petition?—A. I heard nothing of it.

Q. Did any member of the committee give you to understand they had not drawn up that petition, but got it from another quarter?—A. It would be ridiculous for a man to speak positively to a thing he does not recollect of.

Hugh Wilson sworn.—Examined by Mr Drummond.

Q. Were you at a public meeting in Dean Park about the beginning of December?—A. I believe it might be about that time.

Q. Who was the preses of the meeting?—A. James Johnston.

Q. Who made the first speech?—A. Alexander M'Laren.

Q. Did you read an account of the speech?—A. Yes.

Q Was it correct?—A I do not remember.

Q. Did it appear correct or incorrect, generally speaking?—A. Yes, it appeared correct.

Q. Did you see any thing that was incorrect? A.—I cannot say that I did.

Q. Do you know where it was sold?—A. In Thomas Baird's. (Pamphlet was handed to the witness.)

Q. Did you buy this copy in Baird's shop?—A. Yes, I believe I did, I am certain I did.

Q. Do you see your subscription there?—A. Yes.

Q. Where did you write it?—A. In Mr Brown's.

Q. Who was in the shop when you bought it?—A. I do not recollect.

Lord Advocate.—Q. Are there any booksellers in Kilmarnock?—A. Yes.

Cross-examined by Mr Grant *for Alexander M'Laren.*

Q. What was the object of the meeting?—A. To consider the propriety of petitioning Parliament for a Reform.

Q. Had the meeting any other object?—A. None that I know of.

Q. Did any person recommend any thing else?—A. Not that I heard.

Q. Did you hear the pannel M'Laren speak upon that occasion?—A. Yes, I was there at the time, I heard part of his speech.

Q. Was it a very stormy day?—A. Very stormy.

Q. Was there hail?—A. Yes.

Q. Were many umbrellas up?—A. A great number.

Q. Was any noise made by the pattering of the hail upon them so as to prevent you from hearing?—A. Yes.

Q. Was every thing conducted in an orderly and peaceable manner?—A. Yes.

Q. Did the people separate in an orderly and peaceable manner?—A. Yes, they did.

Q. Did you sign the petitions to the Legislature?—A. Yes.

Q. Do you recollect what the terms of the petitions were?—A. No.

Q. Are you well acquainted with the pannel Alexander Maclaren?—A. Yes.

Q. How long have you been acquainted with him?—A. A great many years—five or six, or better.

Q. What character has he possessed as to peaceable demeanour and loyalty?—A. A good character, as far as I know.

Q. Has he had the reputation of being seditious and troublesome—or loyal and peaceable?—A. The latter.

Q. Was he ever connected with any society?—A. I do not know, he was a member of the committee for petitioning for Reform.

Q. But with none other?—A. With no other that I know of.

Q. Do you think you would probably have heard of it if the fact had been so?—A. I think so.

Q. Have you ever heard him talk of the measures of Government?—A. Yes.

Q. What way did he express himself?—A. He used to approve of the measures of Government.

Q. Did you ever hear any arguments between him and others on politics?—Yes, he took the Government side.

Q. Do you know of his having been a member of any military body?—A. I believe he served in the Local Militia—in the Rifle Corps.

Q. Did you look on him as a man of a seditious turn of mind, or as a person a friend to the Government?—A. As a friend to the Government.

Q. Did you ever hear any imputation to the contrary cast on him?—A. I do not remember ever hearing any.

Q. Do you know any thing about his objecting to his speech being printed?—A. No.

Lord Advocate.—Q. Do you know who drew the petition?—A. No.

Q. Did you ever read it?—A. Yes.

David Bow sworn.—Examined by Mr Drummond.

Q. What is Mr Baird?—A. He has a grocer's shop.

Q. Were the pamphlets sold at Mr Baird's shop?—A. Yes.

Q. Many of them?—A. Many. I could not say as to the number.

Q. Some dozens?—A. Yes; some dozens.

Q. Fifty copies?—A. I believe there might.

Q. What were they sold for?—A. Fourpence each.

Cross-examined by Mr Jeffrey *for Thomas Baird.*

Q. Do you know if they were sold any where else?—A. Yes.

Lord Advocate.—Q. Where?—A. Different persons of the committee got them.

Q. Mention who got them.—A. Mr Finnie, Mr Johnstone.

Q. How do you know that?—A. Because I saw them given away. They were given to be sold by Mr Baird.

Q. Besides those given to the members of the committee, several dozens were sold in your shop?—A. Yes.

James Samson, sworn.—Examined by Mr Drummond.

(The pamphlet was handed to the witness.)—Q. Have you seen this pamphlet?—A. Yes.

Q. Have you seen in it the statement of a speech said to have been made by you?—A. Yes.

Q. Have you read it? Is it a fair account of what you said?—A. It is near about it.

Q. Did you compose the speech yourself?—A. No.

Q. Where did you get it?—A. From Mr Baird.

Q. Before the meeting?—A. Yes.

Q. Did you speak or read it?—A. I read it.

Cross-examined by Mr Jeffrey *for Thomas Baird.*

Q. Look at what is written before the beginning of that speech, where it is stated, that a Mr Burt and a Mr White could not attend, but had transmitted addresses to be read to the meeting. Yours was given in the name of Mr Burt, and you understood it was Mr Burt's speech you read?—A. Mr Baird said Mr Burt had sent it to him.

Q. It was not Mr Baird's writing, but Mr Burt's?—A. Yes.

The following Declarations of the Pannels were then read.

Declaration of Alexander M'Laren.

At Kilmarnock, the 26th day of February in the year 1817, in presence of William Eaton, Esq. Sheriff-substitute of Ayrshire, appeared Alexander M'Laren, weaver in Kilmarnock; who being examined, declares, That he is a native of Perthshire, and in April next he has been eight years in Kilmarnock. Declares, That there was a public meeting held at the Dean Park, near Kilmarnock, on the 7th of December last: That that meeting was for the purpose of petitioning Parliament for a reform of grievances. Declares, That previous to that meeting there was a committee of certain individuals in Kilmarnock for the purpose of bringing about the said meeting: That the declarant attended that committee, and David Ramsay Andrews, writer in Kilmarnock, Thomas Baird and Andrew Finnie, merchants there, also attended that meeting, and the declarant has reason to suppose they were members of it as well as himself. Declares, That the declarant first appeared on the hustings and opened the meeting; and being shewn an "Account of the Proceedings of the Public Meeting of the Burgesses and Inhabitants of the town of Kilmarnock," and wherein is engrossed, on part of the fifth page, sixth, and part of the seventh page, what the declarant said at opening the above meeting, declares, That the declarant has perused said speech, and it is near what the declarant said on the above occasion, except what is said about the middle of the seventh page about allegiance, which the declarant thinks he did not deliver in the words as expressed in the publication. Declares, That on the morning of the above meeting, the declarant put into writing what he must say at the opening of the meeting: That he afterwards gave his part of the manuscript to those who were appointed by the committee to superintend the printing of the proceedings, that the same might be published along with the rest. Declares, That James Johnstone, muslin agent in the Waterside of Kilmarnock, was called to the chair, and on that occasion he made a speech, which was much approved of by those present. Declares, That the resolutions, as engrossed in said publication, are the same that were read at the public meeting, and the manuscript was read to the committee previous to the meeting by Thomas Baird, merchant in Kilmarnock, one of the members. Declares, That Hugh Crawford, printer in Kilmarnock, was em-

ployed to print the proceedings of the meeting, which were afterwards sold at fourpence a-piece, to enable the committee to defray the expences. Declares, That the declarant attended a meeting of the committee, when those who spoke gave in their manuscripts for printing, and the declarant thinks the foresaid Thomas Baird was present: That a committee was appointed to superintend the printing, and the said Thomas Baird and Andrew Finnie were of that committee. And being shewn the printed report before mentioned, declares, That he heard none of the authors find fault with any thing that is therein contained; and the said publication is doqueted and signed by the declarant and Sheriff as relative hereto. Declares, That the words on the sixth page, "The fact is, we are ruled by men only solicitous for their own aggrandizement, and they care no farther for the great body of the people than they are subservient to their accursed purposes," were in the manuscript wrote by the declarant, but were not repeated by him at the public meeting when on the hustings as above. And the foregoing declaration being distinctly read over, he declares that it contains the truth. In witness, &c. &c.

Declaration of Thomas Baird.

At Kilmarnock, the 26th day of February in the year 1817, in presence of William Eaton, Esq. Sheriff-substitute of Ayrshire, appeared Thomas Baird, merchant in Kilmarnock; who being examined, declares, That there was a meeting of several persons in the town of Kilmarnock in the month of November last, for the purpose of taking into consideration whether or not there should be a general meeting for the purpose of petitioning the Prince Regent and both Houses of Parliament for a Reform: That the declarant was preses of the first meeting only: That there were several after meetings, some of which the declarant attended, and the 7th of December last was fixed for a general meeting at the Dean Park: That the declarant attended that meeting, and Alexander M'Laren, weaver in Kilmarnock, mounted the hustings, and opened the meeting with a speech: That James Johnstone, muslin agent in Kilmarnock, was called to the chair, and read a speech to the meeting from a memorandum book. And being shewn a manuscript, consisting of nineteen pages, declares, That he is pretty certain that it is the same that he read to the meeting, and which the declarant saw some days afterwards in Walter Andrew's office, and which is doqueted and signed as relative hereto. Declares, That the proceedings were ordered to be printed, and the declarant was appointed by the committee, along with several others, to superintend the printing: That the declarant assisted in correcting the grammatical errors in the manuscript, along with the said Walter Andrew, and the declarant assisted a little at the printing-office in correcting the proof copy. And being shown a half-sheet of paper, titled on the back "NO. 5. Mr Burt's letter," declares, That said words are of the declarant's handwriting, and the said half-sheet of paper was given in by the declarant to the printer, along with the rest of the manuscripts; and said half-sheet of paper is doqueted and signed

by the declarant and Sheriff-substitute as relative hereto. Declares, That the proceedings of said meeting were printed by Hugh Crawford, and a great number of copies were sent to the declarant's shop, and he retailed them at 4 d. a-piece; and being shewn a copy of the publication, declares, That it is a copy of the proceedings which were published and circulated as above, and is doqueted and signed as relative hereto; all which he declares to be true. In witness whereof, &c. &c.

EVIDENCE IN EXCULPATION.

JAMES SAMSON sworn.—Examined by Mr GRANT.

Q. You remember a public meeting at Kilmarnock last December: Was it for the purpose of petitioning Parliament; or what was the object?—A. To petition Parliament.

Q. Were you a member of any committee regarding that meeting?—A. Yes.

Q. Are you well acquainted with the objects of those who were concerned in that meeting?—A. I know as to any meetings I was at of the committee, what I heard there.

Q. What was its object then?—A. Entirely to petition Parliament.

Q. Do you know who were proposed to open the business of the meeting by a speech?—A. Different persons.

Q. Do you remember any of their names?—A. I could not say I entirely recollect, except him that did it; but I know that others were proposed.

Q. At what time was it proposed that Mr M'Laren should open the meeting?—A. About a week before the meeting took place.

Q. Did he accept readily the office of opening the meeting?—A. He did not.

Q. Did he object to doing it?—A. Yes.

Q. Did he suggest any one else to do it?—A. Yes.

Q. Whom?—A. Mr Blackwood.

Q. Did he suggest any other person?—A. He was for imposing it on me.

Q. Did you consent to do it?—A. No.

Q. What was the last time he urged you?—A. About an hour before the meeting took place.

Q. Did he state he was prepared or unprepared?—A. I did not know that he had any thing prepared; but he said he was not a fit hand for it.

Q. It was on your refusal that he undertook the office himself?—A. Yes.

Q. What was the object of the petition? What was it about?—A. To obtain a reform in Parliament.

Q. Was there any conversation as to what was to be done in case the petitions were not assented to?—A. Yes.

Q. What was to be done?—A. To petition again.

Q. Did you hear Mr M'Laren make his speech?—A. I was present and heard some of it, but I did not hear it distinctly.

Q. From what cause?—A. One reason was, that I was behind him; and the wind carried the sound of his voice to the other side; and as I knew I had to read a speech myself, I was a little agitated.

Q. From the general import of the speech, did you gather its purpose was to excite riot and disturbance, or to induce people to come forward to sign this petition?—A. The latter.

Q. Do you know that petitions were proposed?—A. Not then. The resolutions were read and approved of, and the petitions were to be according to the spirit of these resolutions.

Q. What steps were taken for preparing the petitions?—A. I could not say positively about that.

Q. Did you sign any petitions?—A. Yes.

Q. How many?—A. Three, I think.

Q. To whom were they addressed?—A. To the Prince Regent, the House of Lords, and the House of Commons.

Q. Do you know whether they were forwarded?—A. I believe they were.

Q. Were you ever molested in consequence of having signed any of these petitions?—A. No.

Q. Did you ever hear of any one being molested?—A. No.

Q. Have you known Mr M'Laren a long time?—A. A considerable time.

Q. In your opinion what was his character as to quietness of demeanour and loyalty?—A. He was regarded as one of the loyalest men where he lived previous to this charge of sedition.

Q. Have you ever conversed with him on political questions?—A. Sometimes about the doors; and I have heard him dispute with others, and support the side of Administration.

Q How long ago is it since you heard him express his opinion on such subjects?—A. More than a year since.

Q. In disputing with others, what side did he take? Did he oppose those that were on the Opposition side?—A. Yes.

Q. Was he a man given to riotous proceedings, or was he industrious at his business, and quiet in his conduct?—A. He was industrious at his business, and quiet in his conduct.

Q. Was he ever connected with any society, except this committee?—A. No, never.

Q. Is he a sober man, or is he given to company and liquor?—A. Not that I know of; he is a sober man.

Q. Were you present at the committee when there was a talk of printing the proceedings?—A. Yes.

Q. Did you see, or hear read before the committee, a manuscript purporting to be a speech of Mr M'Laren?—A. It was not at that committee I think; it was at a previous one.

Q. There was a subsequent committee?—A. Yes.

Q. And you heard read over what purported to be a speech of Mr M'Laren?—A. Yes.

(The pamphlet was handed to the witness.)

Q. Did you ever read this publication?—A. Yes.

Q. Do you recollect a passage in the printed speech about allegiance?—A. I could not say; I think so.

Q. Look at these words. Do you remember of hearing the manuscript read? and do you recollect in it the words at the end about allegiance, and so on, which are now in that printed paper?—A. I could not say they were there.

Q. Can you say they were not there?—A. They were not there, I think, when he delivered the paper.

Q. Say what was not there.—A. I think the two or three last lines were not in the manuscript: "Yes, my fellow-countrymen, in such a case, to —— with our allegiance."

Q. Do you recollect the appearance of the manuscript?—A. I think it was folded in a narrow stripe like a sheet folded over again. It had been folded, I think, before it was written on.

Q. Was the paper folded thus?—(A sheet of foolscap paper shewn to the witness folded in octavo.)—Yes, it was folded in that manner.

Q. Was it written bookwise?—Yes, I think so.

Q. I do not ask you who did what I am going to mention, but if any body at that committee, not Mr M'Laren, made any pencil marking on that paper?—A. Yes, I think they did. It was not Mr M'Laren.

Q. Do you know what these marks were?—A. I did not see the marks.

Q. Did you hear any person read the alteration made by the marks?—A. Yes.

Q. Was this correction immediately read?—A. Yes.

Q. Did the person who read that correction read it as a correction he had made with these pencil marks?—A. I think he did.

Q. What was the purport of that correction?—A. It is now at the end of this printed speech.

Q. You signed the petition to the House of Commons: Would you know the purport of it if you saw it?—A. I think I would.

Q. Look at that (page 82. of the printed Votes of the House of Commons).

A. I cannot recollect every word or sentence. I think that is the petition. I see sentences that were there.

Q. You recollect the words where you see a × ?—A. I could not say positively.

Q. Do you recollect any of them?—A. One part about indemnity for the past in the sentence.—(The passage which Mr Grant read was pointed out to the witness.)

Q. Do you remember that passage?—A. I cannot remember it.

(*Cross-examined by the* LORD ADVOCATE.)

Q. Who were present when these pencil marks were made on the manuscript speech? - A. I for one.

Q. I suppose so. Who more?—A. John Kennedy.

Q. That is two. Any more? A. Archibald Craig.

Q. That is three. Who else was there?—A. I do not recollect any.

Q. Do you say there were no more present?—A. There were thers

Q. Let us hear the names of some more of them?—A. Mr Baird was there

Q. Was M'Laren? —A. He was there.

Q. Was it by any of those you have named that the pencil marking was made? - A. Yes.

Q. Which of them?—A. Mr Baird.

Q. You have the book lying before you, tell us what was altered?—A. The latter clauses or clause.

Q. Was any thing put in or left out?—A. It was put in the manuscript by Mr Baird.

Q. Did he give his reason for putting it in?—A. Yes; because the manuscript delivered was not complete according to the way in which the speech was spoken, and therefore Mr Baird put it in.

Q. Did Mr M'Laren make any objections to this alteration?—A. I did not hear.

Mr GRANT.—We would have brought several witnesses in addition to those for the Crown, to testify as to the character of the prisoner M'Laren; and it is my duty to inform you of a mistake by which we have been deprived of this opportunity. The letters of exculpation, with instructions to cite witnesses to prove the good character of the prisoner M'Laren, were, by a mistake of the proprietors of the coach at Kilmarnock, forwarded to a person of the *same name* as that on the address on the parcel in a *different town*, and not returned till the night of Thursday before the trial, which circumstance we are in condition to prove to your Lordships; and we have therefore nothing we can legally produce in addition to the testimony given of their characters. But we have certificates which your Lordships may perhaps allow to be read.

LORD JUSTICE-CLERK.—Not at present; you may state the import of them in the address to the Jury; but they cannot be put in here in evidence.

LORD ADVOCATE.—If any statement had been made to me of any wish that the trial should have been delayed, I would have willingly conceded the delay.

Mr GRANT.—The thing was not thought of sufficient importance, and the mistake did not appear till last night.

Mr CLERK.—Your Lordships have heard some evidence which shews that the meeting was for the purpose of petitioning the Regent and the two Houses of Parliament. And you have heard that a petition was forwarded to the House of Commons; and re-

ference has been made to a paper which we state to be a copy of the Printed Votes of that House. We wish to produce evidence of this, and of some others of the same description, for the purpose of shewing what sort of language is permitted to that House. I need not state how necessary it is for our plea to shew you what language it is lawful to use in such cases. In preparing the petitions, and in debates on the subject, such language must of course also be permitted. We can have the productions proved by Mr Grant.

Lord Advocate.—I think it competent to object to these productions, and to the evidence proposed to be brought as to the accuracy of them.

Mr Clerk.—Do you admit them?

Lord Advocate.—I have not read them, and I know nothing of them.

Lord Justice-Clerk.—The Lord Advocate only admits that it is the practice to print votes of the House, and that these offered in evidence have the appearance of being copies. It is not usual to call on counsel to be evidence in the trial. As an agent for the prisoners could not be admitted as evidence, I think it would be better to call on some other person than Mr Grant. I observe a noble Lord present whose testimony might be given.

Lord Gillies.—Mr Grant can be examined as a haver.

Lord Advocate.—I go so far as to say that I have no reason to doubt the genuineness of the copies.

Mr Clerk.—I conceive you have been in the use to receive papers from agents, and to examine them as havers of these papers. An agent does not give parole evidence in the cause, but only gives his testimony to the authenticity of a paper in his possession; that is all that Mr Grant would be asked to do. Mr Grant can certify, not only that he believes them to be the Printed Votes of the House of Commons, but also that he received them under cover from the Vote-office, certifying to him that they are the Votes of the House of Commons.

Lord Advocate.—The evidence would not be complete; Mr Grant can only explain how he came by these papers.

Lord Justice-Clerk.—In a legal sense what Mr Grant could certify would not make them evidence. The question of their being actually the Votes of the House would remain to be established.

Mr Clerk.—After they are made public, they are matters of notoriety, which any persons may refer to before your Lordships.

Lord Advocate.—I admit my belief of their genuineness.

John Andrews sworn.—Examined by Mr Jeffrey for Mr Baird.

Q. Are you Chief Magistrate of Kilmarnock?—A. Yes.

Q. Were you in that office in December last?—A. Yes.

Q. Do you recollect of a public meeting in the Dean Park?—A. I do.

Q. Did you receive any notice or application regarding that meeting?—A. I think I did, one or two days before it took place.

Q. Who waited upon you?—A. Mr Baird met me in the street, and told me of the meeting a few days before.

Q What did he state to you?—A. That he was appointed by the committee to wait on me, to inform me the meeting would take place if I would allow it, and that if I would not he would give up the intention of holding it; I said I did not approve of the meeting, but I thought I could not prevent it.

Q. Was it a numerous meeting?—A. I could not say, I was not there.

Q. Does it consist with your knowledge that the conduct of those at the meeting was orderly or otherwise?—A. There was nothing of riot or disturbance that I heard of.

Q. No breach of the peace?—A. None.

Q. Have there been any since?—A. I know of none; I recollect none.

Q. Was there any kind of disturbance recently before?—A. In September I believe.

Q You are acquainted with Mr Baird?—A. Yes, I have been long acquainted with him.

Q. He is in a respectable way of life?—A. Very respectable.

Q. Is he a quiet and peaceable person, or tumultuous and disorderly?—A. Always peaceable.

Q. Does it consist with your knowledge that he held a military commission in a Volunteer or Local Militia Corps?—A. I generally understood he was a Captain.

Q. Have you seen him acting in that capacity?—A. I think I have.

Q. Down to what time did he so act?—A. I could not say.

WALTER ANDREW sworn.—Examined by Mr COCKBURN.

Q. What are you? A writer?—A. Yes.

Q. Do you know Mr Baird?—A. Yes.

Q. Do you remember the meeting held at Kilmarnock in December last?—A. Yes.

Q. There was a committee for arranging the business?—A. Yes.

Q. Were you a member of it?—A. Yes.

Q. Was Mr Baird?—A. Yes.

Q. You have seen him at the committee?—I have.

Q. Do you recollect any discussion after the meeting about printing the speeches delivered there?—A. Two or three days after the meeting, Mr Baird called on me with the manuscript of a speech which was delivered there. I said I thought indecorous expressions were in it, which ought to be kept out. He urged that objection at a meeting; but the objection was overruled.

Q. What were the precise expressions which you called indecorous or vulgar? Do you remember the expressions?—A. I could

not repeat the words; the passage was the same in the manuscript as in the printed pamphlet, where I read, "which he is bound to do by the constitutional laws of the country; but should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited that allegiance? Yes! my fellow-townsmen, in such a case to —— with allegiance."

Q. What was it you objected to?—A. What I have read.

Q. And Mr Baird concurred in that objection, but he was outvoted?—A. Yes.

Q. Was there any other speech, to the printing of which he objected?—A. The last in the pamphlet; the speech of Mr Kennedy.

Q. What was his objection to Kennedy's speech?—A. He said it was nonsense.

Q. Did he object to any of the others?—A. To part of Mr Burt's.

Q. What was the objection to it?—A. He said it would have been better if it had been clothed in milder language.

Q. From your conversation with him, did you understand him to be the author of that speech?—A. No. He expressed regret that some of it was not expressed in milder language.

Q. Did you ever hear him express a desire to have every thing done quietly, so as to give offence to nobody?—A. Yes.

Q. Was there any riot at the meeting?—A. Not that I heard of.

Q. Did he ever express to you any desire that Government should be overawed?—A. No.

Q. He wished regularity of proceeding?—A. He said the only object was to petition constitutionally, so as to give offence to no one.

Q. What was the object of printing the proceedings?—A. To defray the expences incurred.

Rev. James Kirkwood sworn.—Examined by Mr Jeffrey.

Q. Are you acquainted with Mr Baird?—A. I have had that pleasure for nearly two years.

Q. Do you know him intimately?—A. Very intimately. No one more so.

Q. In the course of your acquaintance with Mr Baird, have you had conversations with him on political subjects?—A. I have.

Q. Has he expressed his sentiments with apparent sincerity and conviction?—A. With the greatest, I have no doubt.

Q. Did he express an attachment to the Constitution as established by law, or a desire to have it altered?—He expressed a desire that the popular part of the Constitution should be strengthened and increased, never that the Constitution should be overturned.

Q. He wished some reformation of the representation of the House of Commons?—A. Yes.

Q. Did he ever explain by what means he thought this should be attempted?—A. I have often heard him say he was anxious that any thing like violence should be avoided, and that none but constitutional measures should be taken.

Q. Does Mr Baird attend your congregation?—A. Yes.

Q. Is he a man of peaceable and moral conduct?—A. To the best of my knowledge he is so.

Q. Did he ever discover any tendency to riotous or disorderly conduct?—A. I never observed any thing of that kind in him.

Q. He is a peaceable man?—A. I think so.

Q. Has he any family?—A. He has several children.

Q. Do you think him capable of intentionally exciting tumult or violence among the people?—A. I should certainly think he is altogether incapable of designedly doing so.

JOHN WYLLIE sworn.—Examined by Mr COCKBURN.

Q. Do you hold any office under Government?—A. I am surveyor of taxes for the third district of Ayrshire.

Q. Do you hold any military commission?—I was in the Volunteers till 1809, and I still hold a commission in the Local Militia.

Q. I need hardly ask you if you are a keen reformer yourself.—A. I never attended meetings for such purposes.

Q. You are rather ministerially inclined, I presume. Do you know Mr Baird?—A. Yes.

Q. What appeared to be his political sentiments?—A. He seemed to be a friend to the Constitution, but wished a reform in the representation.

Q. He had no desire to overturn the Constitution?—A. I have heard him warmly extol the Constitution.

Q. Is he a quiet man?—A. Yes, he has been so ever since I knew him, and that is the greatest part of his life.

Q. Is he respectable in point of situation?—A. Very much so.

Q. Have you served along with him in any corps?—A. I was subaltern, and he was a captain in the Ayrshire.

Q. Did his conduct as an officer give satisfaction?—A. He was a very active officer.

Q. Do you know of a meeting held at Kilmarnock in December last?—A. I heard of it.

Q. Had you any conversation with Mr Baird about it?—A. Yes, once or twice. I heard a gentleman read an account of the proceedings in a company, from a Glasgow paper.

Q. Did you ever hear Mr Baird say any thing about the speeches?—A. I never heard him make any remarks on them.

Q. Do you know Mr M'Laren?—A. Yes.

Q. Was he in that corps you spoke of?—A. Yes, in my company.

Q. Did he behave well?—A. As far as I know, Sir.

JOHN BROWN sworn.—Examined by Mr JEFFREY.

Q. Are you a writer in Kilmarnock?—A. Yes.

Q, Have you a partner in business?—A. Yes, the town-Clerk

Q. Are you acquainted with Mr Baird?—A. Very well.

Q. Is he a respectable man?—A. One of the most so in the town.

Q. Has he a family?—He is a widower, with 4 or 5 children.

Q. Do you recollect a meeting in December last for petitioning Parliament?—A. Yes, I do.

Q. Do you know whether there was a committee met before and after that meeting?—A. I believe one sat several days before the meeting

Q. Were you a member of it?—A. No, nor was I ever at the meeting.

Q. Did Mr Baird ever communicate to you what was passing?—A. Scarcely a day passed in which we did not converse on the occurrences of the meeting; and I was in the habit of asking what passed at the committee.

Q. What did he state as the object of the petitioners?—A. To procure a Reform in Parliament.

Q. By what means?—A. By constitutional means.

Q. Did he disavow violence or other means?—A. Most distinctly.

Q. You know Mr Baird was at the public meeting: Did he give you any account of what took place there?—A. Yes, he told me who spoke. When the proceedings were published, I was surprised at seeing a paragraph which I did not look for, and told him it was a pity it was there. He said he disapproved of it himself, and was against printing it at all, but that a vote was taken on the subject by the committee, and they determined to print it, as they did not wish a garbled statement of the proceedings to go before the public.

Q. Did he make observations on any of the other speeches?—A. He pointly objected to M'Laren's speech.

Q. Did he object to any of the others?—A. He disapproved of one or two, as having language too keen and disrespectful.

Q. Does it consist with your knowledge that he has held commissions in military corps?—A. He commanded a company of Rifle Volunteers for some time.

Q. Did he give satisfaction in his military capacity?—I never heard any complaint against him. I always conceived he behaved like a gentleman.

Q. Was he lately appointed a commissioner of police of the town?—A. Yes, at last annual election.

Q. From what you know of him, was he sincere in his sentiments in favour of constitutional modes of proceeding for obtaining redress of grievances?—A. There is no question of that. He never approved of any other than constitutional modes of redress. I have known him intimately these eight or ten years.

Q. Was he likely to say or do any thing to produce discontent?—A. I conceive he would be the last man in the world to be guilty of any thing of the kind.

Q. Are you clerk to the Road Trustees?—A. Yes.

Q. Did you understand Mr Baird objected to these expressions, not as being improper in themselves, but as likely to lead the persons who uttered them into a scrape?—A. He did not appear to be apprehensive of any consequences to result from them, but he objected to them as improper expressions.

Q. Are you acquainted with M'Laren?—A. A little. I have met him on business.

Q. Do you know any thing of his character?—A. I never heard any thing against him.

The Lord Advocate then rose, and addressed the Jury in the following terms.—Gentlemen of the Jury. You have heard from the Indictment that the pannels are charged generally in the major proposition with the crime of Sedition, a crime well known in the law of Scotland, and with the general description of which you must be already familiar, but with which, at all events, you have had additional means of being made acquainted, from the luminous and satisfactory judgments of their Lordships, delivered this morning in the commencement of the trial. I shall not therefore, *in this part* of the observations which it is incumbent upon me in discharge of my public duty to address to you, say any thing in further explanation of the law of sedition, which, as a crime calculated to unsettle the order of society, and to introduce tumult, anarchy and bloodshed into these realms, which, for upwards of a century, have enjoyed the highest degree of freedom that ever fell to the lot of any people, is one of the most dangerous which can be committed against the State. Before, however, concluding the remarks with which I shall have to trouble you, it may be necessary for me to draw your attention to the application of the law to the charges preferred against the pannels. In the first instance, however, I shall confine myself exclusively to the evidence which has been adduced, in order to establish that the acts, at least, alleged in the Indictment to have been committed by the prisoners, have been brought home to them.

You will observe, then, Gentlemen, that in the minor proposition of the indictment, the prisoners are charged,—M'Laren with having, at a public meeting, on the 7th of last December, held in the neighbourhood of Kilmarnock, and attended principally by the lower orders of the people, used certain seditious and inflammatory language, in a speech which he then delivered;—a speech calculated to degrade and bring into contempt the Government and Legislature, to withdraw therefrom the confidence and affections of the people, and to fill the realm with trouble and dissention. For the precise expressions which he then employed, I shall beg leave to refer you at present to the copies of the indictment which are before you, in which the passages of the speech are detailed at length, and to which afterwards I shall be obliged more particularly to call your attention.

The other pannel Baird, again, is charged with having published this speech, and with having been accessary to the printing and circulating a seditious tract or statement, bearing to be an "Account of the Proceedings of the Public "Meeting of the Burgesses and Inhabitants of the Town of

"Kilmarnock, held on the 7th of December 1816, for the pur-
"pose of deliberating on the most proper method of re-
"medying the present distresses of the country, with a full
"report of the speeches on that occasion." Then follow particular passages contained in that publication, which are termed generally to be seditious, tending to inflame the minds of the public against the constitution of the kingdom, and which, it is affirmed, was published by him with the wicked and felonious purpose of exciting sedition against the Government, and of withdrawing the affections of the people from the established order of things in the country. The publication has been duly authenticated, and although I shall afterwards more particularly refer you to some of its most striking passages, the whole, I trust, will receive your full and deliberate consideration.

In the conclusion of the indictment both prisoners are charged with being accessaries to the crimes committed by each. From this you will understand, that if from a full consideration and investigation of the proof which I have laid before you, you should be of opinion that the prisoner Baird was accessary to making the seditious speech delivered by M'Laren, or that the other pannel M'Laren was accessary to publishing or circulating the seditious libel, stated more particularly to have been sent into the world by Baird, then you will have to find, supposing you are of opinion that the speech and publication are seditious, that both are guilty art and part of the crime laid in the indictment.

In considering this part of the case as a question of evidence, I do not think that it is necessary for me to go very deeply into the import of the depositions of the witnesses; for I conceive, that while you are called upon to discharge a most important duty, in declaring the guilt or innocence of the pannels as to the crimes libelled, and which may depend on considerations altogether independent of the mere fact of the delivery of the speech by the one, or the publication of the libel by the other, you can have no difficulty in forming an opinion, that both, and each of them, at least, did commit the acts which are charged against them in this indictment. You can have no difficulty in being of opinion, that it is proved that M'Laren did deliver a speech at the meeting, and that the speech did contain the expressions which are cited in this indictment: Neither, in my apprehension, can you doubt, that the publication in question was the work of Baird; that he not only superintended the printing, but assisted in preparing the manuscript for the press; and that he sold and distributed this libel, prepared under his own

eye, with the utmost diligence, indefatigable zeal, and persevering activity. In like manner, I, at least, cannot see where a doubt can exist, that it has been legally proved that M'Laren was art and part in the publication, and that he is now bound to answer for that publication which was thus sent forth into the world, be its qualities what they may.

But though that is the impression on my mind, and although I have no doubt that the same has been made upon the minds of all of you, it is, notwithstanding, Gentlemen, my duty to go over that evidence, and to endeavour to point your attention to its different parts, as applicable to the charge against the pannels separately,—distinguishing, as I have said, the bare facts of the case from the view which I am afterwards to take of the nature and import of the expressions.

In the first place, then, you will attend to the evidence, by which it is proved that the speech in question was actually delivered by the prisoner M'Laren.

And, first of all, upon this branch of the case, I shall call your attention to the statement given by the prisoner himself in his declaration emitted before the Sheriff. But, before doing so, it may be proper for me to state to you distinctly, that in considering this part of the evidence, you must remember, that nothing contained in this piece of evidence can inculpate the other prisoner, but can only affect the party by whom it was emitted. Neither, I will fairly tell you, is it to be taken as conclusive evidence even against him. It is, however, a very strong circumstance of presumption against him, made, as it has been admitted to have been in this case, voluntarily, while the prisoner was sober and in his sound senses, deliberately and seriously. I shall submit to you, therefore, that when the admissions made in this declaration are taken with the parole proof, no doubt can be left upon your mind of the truth of the allegations made in the indictment, in point of fact, regarding the prisoner M'Laren.

In the first place, then, the declaration of M'Laren states, "That there was a public meeting held at the Dean Park, "near Kilmarnock, on the 7th of December last: That that "meeting was for the purpose of petitioning Parliament for "a reform of grievances. Declares, That previous to that "meeting there was a committee of certain individuals in "Kilmarnock for the purpose of bringing about the said "meeting: That the declarant attended that committee, and "David Ramsay Andrews, writer in Kilmarnock, Thomas "Baird and Andrew Finnie, merchants there, also attended "that meeting; and the declarant has reason to suppose that

"they were members of it as well as himself. Declares, That "the declarant first appeared on the hustings, and opened "the meeting; and being shown an "Account of the Pro-"ceedings of the Public Meeting of the Burgesses and Inhabi-"tants of the town of Kilmarnock," and wherein is engross-"ed on part of the fifth page, sixth, and part of the seventh "page, what the declarant said at opening the above meet-"ing, declares, That the declarant has perused said speech, "and it is *near what the declarant said on the above occasion.*" He next, no doubt, makes an exception as to the inaccuracy of that speech, "except what is said above the middle of the "seventh page about allegiance, which the declarant thinks "he did not deliver in the words as expressed in the publi-"cation."

This, you will observe, is not denying the purport of the passage in the libel, but only the words in which the import was conveyed to the multitude, and we shall see afterwards whether the prisoner be correct in this part of his statement.

He next declares, "That on the morning of the above "meeting, *the declarant put into writing what he must say at "the opening of the meeting: That he afterwards gave his part "of the manuscript to those who were appointed by the commit-"tee to superintend the printing of the proceedings, that the "same might be published along with the rest.* Declares, That "James Johnstone, muslin-agent in the Waterside of Kil-"marnock, was called to the chair, and on that occasion he "made a speech, which was much approved of by those "present. Declares, *That the resolutions, as engrossed in said "publication, are the same that were read at the public meet-"ing, and the manuscript was read to the committee previous "to the meeting, by Thomas Baird, merchant in Kilmarnock, "one of the members.* Declares, That Hugh Crawford, print-"er in Kilmarnock, was employed to print the proceedings "of the meeting, which were afterwards sold at fourpence "a-piece, to enable the committee to defray the expences. "Declares, That the declarant attended a meeting of the "committee, when those who spoke gave in their manuscripts "for printing; and the declarant thinks the foresaid Tho-"mas Baird was present: That a committee was appointed "to superintend the printing, and the said Thomas Baird "and Andrew Finnie were of that committee. And being "shewn the printed report before mentioned, declares, *That "he heard none of the authors find fault with any thing that is "therein contained;* and the said publication is docqueted and "signed by the declarant and sheriff as relative hereto." And, before concluding, he "declares, That the words on the sixth

" page, " The fact is, we are ruled by men only solicitous " for their own aggrandizement, and they care no farther " for the great body of the people than they are subservient " to their accursed purposes," *were in the manuscript wrote by " the declarant*, but were not repeated by him at the public " meeting when on the hustings, as above."

Now, Gentlemen, this is the declaration of the pannel, and it must, as it will, be supported by other evidence, before, as I have told you, it can have full authority with you as establishing the fact against the prisoner. You will therefore observe, that in this declaration he admits generally, that all the parts of his speech, as given in this printed paper, are accurate, with two exceptions.

The first exception is, that there is something inaccurate in the words at the passage regarding allegiance; but he does not state, or allege, in what particular these expressions are inaccurate; neither does he deny that they convey the import of what he had delivered. And, no doubt, there is an inaccuracy in the printed account of this passage; because, you will observe, that one monosyllable, of very great import, is cautiously omitted, which, it is proved by the rest of the evidence, beyond all doubt, the prisoner actually employed. The word " *hell*" is omitted altogether; and while the prisoner refrained from stating what words were incorrectly given, I would be entitled to infer that it consisted in this omission; and, if so, it is of no importance to the general result. Indeed, it is enough for my purpose that he admits generally the accuracy and authenticity of the publication; because I have the means of supporting the strong circumstance of evidence afforded by this general admission, by other testimony which supplies whatever is awanting in his own declaration.

The second exception which he makes is, that some words, which are mentioned at the end of the declaration, are printed, which he did not deliver at the hustings; but you will observe, that he admits that those words were in the copy of his speech which he gave to be printed, and that he does not allege that he at any time ever objected to the publisher, or to the committee, that his speech as delivered was not accurately given, but, on the contrary, that he acquiesced, down to the hour of his emitting this declaration, in its being the true and fair account of the speech he had made on that occasion.

Let us now attend to the parole proof, by which this declaration has been amply confirmed.

Of the two witnesses who were first examined, you have Finnie, who swears that the speech which he heard M'Laren deliver on that occasion contained these words: " We will

"lay," or "let us lay, our petitions at the foot of the "Throne, where sits our August Prince, whose generous na-"ture will incline his ear to hear the cries of his peo-"ple, which he is bound to do by the constitutional laws "of the country; and we are thereby bound to give him "our allegiance: But if he should be so infatuated as to turn "a deaf ear to the general cries" or "voice of his peo-"ple, to hell with allegiance." That is the express statement given by a person who himself attended the meeting as a party, who cannot be supposed to be very unfavourable to the prisoners, and whose testimony indeed was given in a way that must satisfy your minds he did not intend to press the case more than it would bear against either of them.

Next we have the witness Merrie, who expressly swears, (though his memory is not distinct as to the whole passage), that M'Laren made the first speech. He remembers the words "to hell with" or "for such allegiance." He says M'Laren "wished the people to address their August Sove-"reign, and he meant their allegiance to *him*." Then he remembers the words, "if he turned a deaf ear to the voice of "his people;" and after that came the words "to hell with "allegiance."

Besides the testimonies I have now referred you to, I might, if it were necessary, go over the evidence of a great many more of the witnesses; but this must be superfluous. You will, however keep in remembrance the evidence of Samson, who, when called back and examined for the prisoners, deposed, that he attended the meeting of the committee when the speeches were given in for publication by the different persons by whom they had been delivered at the public meeting; that M'Laren was present at that meeting of the committee, and that when he produced his manuscript, there was a correction made on it by Baird, which was read to the meeting; and that the pencil-marking made by Baird were those very words I have referred to which are given in this speech, and copied into the indictment which is lying before you. He states, that the words which were added by Baird with the pencil are, "which he is "bound to do by the laws of the country: But should he "be so infatuated as to turn a deaf ear to their just petition, "he has forfeited their allegiance. Yes, my fellow coun-"trymen, in such a case to hell with our allegiance." These are the words which with a pencil Baird added to M'Laren's speech in his own presence. Now why, I will ask, according to the prisoner's own friend Mr Samson, were they added? Why, because the committee wished to give a true account of what took place at the meeting, or, to use his own words, "because

" the manuscript delivered in was not complete according to " the way in which the speech was delivered." The committee did not wish to garble the proceedings, but to give a minute, true and accurate account of what happened; and the passage therefore was inserted. All this, you will remember, took place in M'Laren's presence; and did he object to this addition being made? No, on the contrary, he agreed that the passage should remain there, because it was an accurate account of what he had said. Some feeling of propriety, no doubt, prevented the committee from putting in one word which had been used by M'Laren, and there is a blank accordingly in the printed paper; but the witnesses who were examined fill up the word, and tell you what is wanting. You have M'Laren's admission, therefore, in his declaration, of the general accuracy of the printed account of his speech; you have the parole proof; you have this statement of Samson's; and you have M'Laren's virtual admission in the committee, that these were the expressions he used. It does therefore appear to me to be unnecessary to go farther in examining evidence on this part of the subject. I think it is clear these words were used by M'Laren, and that of this it is impossible you should doubt. I may now, then, put the prisoner M'Laren aside altogether, in so far as the mere fact of the speech having been delivered by him is concerned; and it is exclusively to that I am speaking at present.

As to the prisoner Baird, we must also look to the terms of his declaration. He declares, " That the 7th of December last " was fixed for a General Meeting at the Dean Park: That " the declarant attended that meeting, and Alexander Mac- " laren, weaver in Kilmarnock, mounted the hustings, and " opened the meeting with a speech: That James John- " stone, muslin-agent in Kilmarnock, was called to the chair, " and read a speech to the meeting from a memorandum- " book. And being shewn a manuscript consisting of nine- " teen pages, declares, That he is pretty certain that it is " the same that he read to the meeting, and which the decla- " rant saw some days afterwards in Walter Andrews's office, " and which is docqueted and signed as relative hereto. De- " clares, *That the proceedings were ordered to be printed, and* " *the declarant was appointed by the committee, along with* " *several others, to superintend the printing: That the decla-* " *rant assisted in correcting the grammatical errors in the* " *manuscript*, along with the said Walter Andrews, and the " declarant assisted a little at the printing-office in correcting " the proof-copy: And being shewn a half-sheet of paper, " titled on the back, " NO. 5, Mr Burt's letter," declares,

"That said words are of the declarant's handwriting, and "the said half-sheet of paper was given in by the declarant "to the printer, along with the rest of the manuscripts, and "said half-sheet of paper is docqueted and signed by the decla- "rant and sheriff-substitute as relative hereto. Declares, "That the proceedings of said meeting were printed by Hugh "Crawford, *and a great number of copies were sent to the de- "clarant's shop, and he retailed them at 4 d. a piece.*"

The result of this declaration, Gentlemen, seems to be, that the prisoner admits that he was one of the committee appointed to superintend the publication complained of,—that he assisted in correcting the manuscript to fit it for going to the printing-house,—that he did superintend the printing of it, assisting even in correcting the press, and that a great number of copies were sent to his shop which he retailed and distributed.

Accordingly this admission, which, I have said, is, in point of law, a strong circumstance of evidence against the prisoner, is amply confirmed by the depositions of the witnesses, by several of whom it has been proved that he attended the meeting upon the 7th of December, and that he heard the speeches contained in this publication delivered or read by the persons to whom they are attributed. By others it has been proved, that he was one of the committee appointed to superintend the publication; and by one of that committee it is established, that in the matter of publication he took a most active concern, perusing at least the manuscript of some of the speeches as they were given in by the authors or reputed authors; and that such was his vigilance, in providing that none of the precious matter which had come before the public meeting should be lost, that the passage which is chiefly complained of in the first charge against M'Laren, having been omitted in the manuscript, he himself took his pencil, and, for the edification of the public, to whom the publication was addressed, actually wrote it down on the press copy.

In like manner, you have it proved by Murray, Mr Crawford's journeyman, that Baird attended at the office during the time the publication was printing,—that he examined the first proof, and suggested at least one, if not more corrections.

Again, as to the fact of publication, it is proved by the prisoner's shop-boy, and by the witness who bought a copy at his shop, as also by one of the members of the committee appointed to superintend the publication, and who delivered great numbers of the pamphlet for the purpose of being sold

and distributed, that Baird was the principal hand by whom this publication, be its merits or demerits what they may, were sent out upon the world.

When you consider this body of evidence, therefore, I cannot entertain a doubt that you must be clear that the fact of the publication by Baird is incontrovertibly established.

Upon this part of the question, therefore, I have only further to remark, that there can be as little ground for doubting, that the prisoner M'Laren, besides being bound to answer for delivering the speech, which in this indictment is charged with having been seditious, must also answer for being an accessary to printing and publishing the pamphlet upon the table. The facts of his having given in the manuscript copy of his own speech for the purpose of being published, and that he was a member of the committee of publication, facts which are proved beyond all contradiction by the witnesses to whom I have already referred, as well as by his own admission, can leave no manner of doubt upon this subject.

I apprehend, therefore, that you, Gentlemen, must now concur with me in holding it to be established by the proof, 1*st*, That M'Laren delivered at the public meeting that speech, of which parts are quoted in the Indictment; 2*dly*, That the publication purporting to be "Account of the Pro-"ceedings of the Public Meeting of the Burgesses and Inha-"bitants of the Town of Kilmarnock, held on the 7th of De-"cember 1816," &c. was printed and published by the prisoner Baird, who was active in its sale and distribution; and, 3*dly*, That the prisoner M'Laren was also an accessary to the fact of the publication.

Upon this part of the case, therefore, which must in fact form the foundation of the opinion which you are to make up, and of the verdict you are to return, there neither can be any ground of difference between my friends on the opposite side of the Bar and myself, nor, I am confident, can there be a vestige of doubt in your minds.

But, Gentlemen, that part of the case which requires your utmost deliberation still remains to be considered. In the commencement of the trial, you heard an admission upon my part that it would be competent for the prisoners, not only to dispute the truth of the facts charged in the Indictment, but to plead to you, that supposing those facts were brought home to both of them, the speech and publication in question did not amount to the crime of sedition. To that admission I still most heartily adhere. It has always been in this country, and I trust always will be, the province of the Jury, in every question of this description, to find in their verdict,

whether there was a criminal intention entertained by the prisoners,—whether a crime has been committed or not,—and whether that crime amounts to the crime of sedition.

In order to enable you, therefore, Gentlemen, to make up your opinions upon this subject, had it not been for the deliberate judgments of the Court which you had an opportunity of hearing at the commencement of the trial, it might have been expected of me to enter into some details of the history and of the nature of this offence,—one of the most various and comprehensive, and at the same time one of the most dangerous and flagitious known to the law of Scotland. But as you heard the unanimous opinion of their Lordships, that the allegations contained in this Indictment, if established against the prisoners, would amount to the crime of sedition, I shall confine myself to that statement upon the subject which is barely required for enabling you to follow the conclusions which I find it my duty to draw from the particular passages in this publication which I have been called upon to bring under your consideration.

Sedition, Gentlemen, is a crime by the common law of Scotland; and it has been laid down by our writers, and by the decisions of this Court, that it reaches to practices of every description, whether by deed, word, or writing, which are calculated and intended to disturb the tranquillity of the State, by exciting disaffection in the minds of the people against the established Government of the country, to produce resistance to its authority, or to lead to its ultimate subversion.

Allow me, however, to guard myself against misconstruction as to the use of the terms, "the established Government," which I have now employed. By those terms, you will not by any means understand that I refer to that which, in ordinary parlance, is commonly so termed, I mean his Majesty's Ministers. You need not be told that it is competent and lawful for the subjects of this realm to canvass all the measures of his Majesty's Ministers,—to state that they are contrary to law, and contrary to the interest of the country;—that their proceedings should be interrupted, and the authors of them dismissed from office; and in talking, therefore, of raising disaffection to his Majesty's Government, you will understand that I do not mean exciting disaffection to his Majesty's Ministers. Far be it from me to contend that this is against law, or that courts of law ought to interfere to punish practices, words, or writings, calculated to produce that effect. But by the established Government, I mean the Constitution of King, Lords and Commons, as established at the

period of the glorious Revolution 1688; and, in this sense of the term, I state to you, that any thing which tends to produce public trouble or commotion,—any thing which moves his Majesty's subjects to the dislike, subversion, or disturbance of his Majesty's Government, amounts to the crime of sedition. Any speech or writing that is calculated, and intended to vilify and traduce the Sovereign in his capacity of Head of the State, or as a branch of the Legislature,—any speech or writing calculated and intended to vilify and traduce the House of Peers,—any speech or writing calculated and intended to vilify the House of Commons, stating, for instance, that it is not the House of Commons, that it is the mere nominal and pretended representative of the people, and does not represent them,—that it has become corrupt;—writings or speeches inculcating all, or any of those things, fall under the crime of sedition. In like manner, either a speech or a writing exhorting the people to throw off their allegiance, under any particular contingency which may arise, from any one branch of the Legislature, either doing an act, or refusing to do an act, which may, or may not be within its particular competency, will amount to the crime of sedition.

Allow me also to observe to you, Gentlemen, that in all cases of this description, the time when the particular act complained of is committed, the state of public opinion, and the political relations of the country, internal or external, will often be essential to the constitution of the offence. For instance, to use an illustration that I believe was given by an eminent person, who, in the year 1795, held the situation which my honourable friend near me now holds, Had, in the year 1745, any number of individuals, however few, with white cockades in their hats, and muskets in their hands, repaired to the Castlehill, shouting out the name of the Pretender, they would have been guilty of a crime probably not short of the highest that could be committed against the State; but were the same act to be done now, they could be regarded in no other light than as madmen. Various other illustrations of a nature similar might be stated, but I deem it sufficient for me to submit to you generally, as being clear law, that if at any time publications or speeches are complained of as seditious, it will always be of importance to consider the state of the public mind at the period the act alleged to constitute the crime has been committed, in order duly to appreciate their nature and import. With this view, and, before concluding, it will be my province to submit to you, in a single sentence, that the state of the country at the time when this publication issued from the press, and when

the speech was delivered by M'Laren at the public meeting, must enter deeply into your consideration in making up your verdict upon this Indictment.

Upon this subject I have only farther to state, that the crime of sedition is one which this Court, and the law of this country, has viewed as one of the highest and most flagitious description. Its object is to introduce dissention, troubles, and bloodshed into the kingdom,—to subvert the laws, and to dissolve the bonds of society. It is the duty of Government, therefore, to resist and extinguish it in the very outset; and if, in the present instance, I have any thing to regret, it is that this, and perhaps other cases of a similar description, have not been brought sooner before a Jury of the country.

We come now, therefore, Gentlemen, to consider whether the terms of the speech, as delivered at the meeting by Maclaren, or the terms of that speech and of the other speeches in the publication afterwards given to the world by the prisoners, amount to the crime of sedition, according to the description of that offence which I have now had the honour of giving you.

And first, as to the speech. In it you will recollect, that M'Laren stated, "That our sufferings are insupportable is "demonstrated to the world; and that they are neither tempo-"rary, nor occasioned by a transition from "war to peace," "is palpable to all, though all have not the courage to avow "it. The fact is, we are ruled by men only solicitous for their "own aggrandizement, and they care no farther for the great "body of the people than they are subservient to their ac-"cursed purposes."

In this passage, the term Rulers is, you will observe, Gentlemen, that which is employed; and this, it may be said, applies to his Majesty's Ministers, and not to the Government in the more comprehensive meaning of the term; but it does no such thing. There is no limitation, you will remark, introduced by the speaker, even taking the term generally, and, in its extensive sense, undoubtedly it comprehends the whole order of our Governors,—King, Lords and Commons. But in an after part of the speech, it is explained, that this last is actually the meaning in which it was employed. The statement therefore is, that the King, Lords and Commons, are corrupt;—that they are solicitous only for their own aggrandizement;—that they care no farther for the body of the people, than as they are subservient to their accursed purposes. Now, I ask, is not this statement calculated to bring the Government into contempt, and to excite disaffection to the established order of things?

Does it not tell the people, that they have no interest whatever in the stability of the State; and is it not calculated immediately to lead to disturbance and commotion? It is for you, Gentlemen, to answer the question, and it seems to me impossible to doubt that that answer must be in the affirmative.

But in this passage allusion is made to the distresses of the people, and these are made the instrument for giving greater effect to this seditious libel upon the rulers of the country. This, you cannot doubt, enhances the crime of the prisoner, by having employed that under which his hearers were suffering, and which he must have known their rulers could not remove, as an engine for promoting the disaffection he was endeavouring to excite. God knows, Gentlemen, I by no means wish to underrate the distresses which the persons attending that meeting were labouring under in common with their brethren in different parts of the country. No one who was at that meeting, no one who hears me now, can be more sensible of the great distress which the lower ranks in this country have suffered, and none can more deeply deplore it than I do. While, however, I fully appreciate the extent of those distresses, and applaud the patience with which they have been endured, I can only urge the use which is made of them in the passage I have read, as tending to prove the wicked and malicious intention of the prisoners, who could have had no other object in referring to them than to excite disaffection and sedition.

The prisoner's speech then goes on to state, "If you are "convinced of this, my countrymen, I would therefore put "the question, Are you degenerate enough to bear it? Shall "we, whose forefathers set limits to the all-grasping power of "Rome; Shall we, whose forefathers, at the never-to-be-for-"gotten field of Bannockburn, told the mighty Edward, at the "head of the most mighty army ever trode on Britain's soil, "Hitherto shalt thou come and no farther;" Shall we, I say, "whose forefathers defied the efforts of foreign tyranny to en-"slave our beloved country, meanly permit, in our day, with-"out a murmur, a base Oligarchy to feed their filthy vermin "on our vitals, and rule us as they will?"

Now, upon this passage, Gentlemen, I shall merely say, that you have heard the only comment which I think it can fairly admit of, put upon it in the judgment of one of their Lordships in the early part of this trial. You must be satisfied that the object of the orator here is to recommend resistance, and to encourage resistance by calling to the recollection of his hearers the popular allusion to the battle of Bannockburn.

Accordingly he goes on to state, that which must leave all doubt of his intention in this passage out of the question, "Let us lay our petitions at the foot of the Throne, where "sits our August Prince, whose gracious nature will incline "his ear to listen to the cries of his people, which he is bound "to do by the laws of the country: But should he be so "infatuated as to turn a deaf ear to their just petition, he has "forfeited their allegiance. Yes, my fellow townsmen, in such "a case, to hell with our allegiance."

Now, in order fully to understand the seditious import of this passage, Gentlemen, it must be taken in connection with that which I previously commented on, and a passage in the resolutions of the meeting, which I am fairly entitled, under all the circumstances of the case, to take as part of M'Laren's speech. On page 26. of the publication, it is stated, "Being "therefore impressed with the truth of these resolutions, the "meeting resolve to present petitions to his Royal Highness "the Prince Regent, and to both Houses of Parliament, re-"questing his Royal Highness, in particular, to assemble par-"liament without delay; to call upon it immediately to adopt "such measures as may tend to restore to the people their "undoubted right in the representation; to order, in the "name of the people, an immediate reduction of the taxes, "and the standing army, the abolition of all unmerited "pensions, sinecures, grants, and other emoluments, as the "surest way of establishing, on a firm and lasting basis, the "rights of the crown, and the privileges of the people: And "that, in all time coming, no person who has an office or "place of profit under the King, or receives a pension from "the Crown, shall be capable of serving as a Member of the "House of Commons."

Now, Gentlemen, the meaning of all this taken together, is, that unless the Prince Regent shall order the Parliament to reduce the taxes and the standing army, and to do all the things which are there enumerated, he has forfeited our allegiance, and that the allegiance of the meeting is to be thrown off, and to be sent to hell. But, Gentlemen, you are not to be told that the Prince Regent has no such power that —

Mr Clerk.—That is not the meaning of the passage.

Lord Advocate.—If my interpretation of the passage is wrong, my learned friends will afterwards have the means of correcting me. It would be better if at present they would refrain from interrupting me. In my view of it, it clearly imports the meaning which I have put upon it. The Prince Re-

gent is to assemble the Parliament, and to call upon it to restore to the people their right of representation; but, in the second place, he is to order all the other things to be done by the Parliament, which it is not within his competence to do, or he is to order them to be done of his own authority; and if he does not do so, then what is the penalty? No less than the forfeiture of our allegiance, and, as he says, "in that "case, to hell with our allegiance." Here then, Gentlemen, the miserable and distressed people, goaded by their privations and afflictions, who were surrounding the prisoner, were in this speech excited to make demands upon the Sovereign and the Legislature, which, if they were refused, no less a result was to follow than the forfeiture and throwing off of their allegiance.

Now all this, Gentlemen, I state to you to infer the crime of sedition. It was sedition to alienate the affections of the people from the Government, in the manner which was done in the first part of the speech. It was sedition to tell the meeting, in the second part of it, that if the different reforms there called for were not granted, and if the evils complained of were not removed, their allegiance was forfeited, and to exhort them in such a case to throw it off.

The next point for consideration is the publication itself. But here I am saved repeating the commentary upon one part of that production, the speech of M'Laren; for it must be manifest to you, that if the speech when delivered was seditious, it cannot be less so when reduced into the form of a publication; and every thing, with one exception, which was delivered *viva voce*, is to be found in the printed report. There is a blank before allegiance,—the word "*hell*" is left out. It is your province, however, to fill that blank up. Now, after the evidence laid before you this day, you can have no difficulty upon this point. You heard that one of the prisoners, in the presence of the other, wrote out the whole of the passage upon the manuscript when preparing it for the press. The propriety of inserting the passage was afterwards discussed, and doubts were entertained upon the subject by the committee. With the fact of that passage being actually in the handwriting of Baird, looking him in the face, my learned friend (Mr Grant), rather strangely in my opinion, pressed upon his witnesses to prove that Baird in particular was aware of the indecency of its character; for, under such circumstances, the fact of publication only made his offence the greater. Accordingly, it is proved to you, that the prisoner, whether convinced of its indecency or not, still he, the publisher and

conductor of the press, sends it to be printed; and out it comes with the word only left blank, affording, I should think, to your conviction, the fullest and most complete evidence of his guilt.

But let us proceed to consider the other parts of the publication. In page 2. of the indictment there is this passage; "But let us come nearer home: look at the year 1793, "when the debt amounted to two hundred and eleven mil- "lions, and the annual taxation to about eighteen millions; "when liberty began to rear her drooping head in the coun- "try; when associations were formed from one end of the "kingdom to another, composed of men eminent for their ta- "lents and virtue, to assert their rights; when a neighbour- "ing nation had just thrown off a yoke which was become "intolerable,—What did the wise rulers of this country do? "Why they declared war, not only against the French na- "tion, but also against the friends of liberty at home."

Now, I think it is impossible, Gentlemen, for you to read this passage, without being of opinion that its object was to impress on the minds of the public an admiration of the proceedings of the French nation, (polluted as it was at the time by treason, by blood, and by crime of every description which it ever entered into the mind of man to conceive),—and of those who were termed "the Friends of Liberty at home" in the year 1793, its imitators and admirers;—to hold out that the associations of that period were formed for the purposes of promoting liberty, but which all of you know it was decided by Jurymen sitting in that box where you are now placed,—Jurymen to whose intelligence and vigour the gratitude of this country must be for ever due,—that they were formed for the purpose of exciting disaffection to the Government, of introducing turbulence and commotion, and of overturning the Constitution. In short, the object of the publication was to call upon the people to imitate what was so worthy of admiration; and it would be wasting time to persuade you, that if this was the object, one of a more seditious description, when taken in conjunction with the other passages in the publication which I have already read, or am now to read, cannot be conceived.

The publication then proceeds in direct terms to state, "that "the House of Commons is not really what it is called,—*it* "*is not a House of Commons.*" And here it is necessary for me to read several passages to you, in order to prove the seditious nature of the publication, and which I shall do without commentary, because I am persuaded that nothing that I can add could carry the conviction more strongly to your minds

of its pernicious and criminal import than the very sentences themselves which I am to bring under your consideration.

On page 23. of the publication you will find it stated, "that "the debt, now amounting to nearly 1000 millions, has been "contracted in the prosecution of unjust and unnecessary "wars, by a corrupt administration, uniformly supported by "a House of Commons, which cannot be said, with any jus-"tice, to be a fair and equal representation of the country, "but which for the most part is composed of men put in by "a borough faction, who have usurped the rights of the peo-"ple, and who, by undue means, have contrived to return "a majority of members of that House;—a fact which has "not only been admitted on all hands, but which has been "unblushingly attempted to be justified by reason of its avow-"ed frequency and notoriety. The meeting, therefore, have "no hesitation in asserting, the debt can never be said to be "national, nor the present taxation just, seeing the former "has been contracted by men who do not represent the coun-"try, and the latter raised without consent of the tax-payer; "and it is contrary to the laws and constitution of this and "every free country, that no man can be taxed but with his "own consent, or with the consent of his agent or represen-"tative."

Again, at page 35. there is the following passage: "We "have these twenty-five years been condemned to incessant "and unparalleled slavery by a usurped Oligarchy, who pre-"tend to be our *Guardians* and *Representatives*, while, in "fact, they are nothing but our *inflexible and determined ene-"mies*. But happy, happy am I to think, that you have met "this day to declare, "that you will suffer yourselves no "longer to be imposed upon." And a little lower down it is stated in express terms: "At present we have *no represen-"tatives*; they are only *nominal*, not *real*; active only in "prosecuting their own designs; and at the same time telling "us that they are agreeable to our wishes." And again, at page 38., "A set of pensioned seat-buyers in the House of "Commons have deprived you of all your rights and privi-"leges. They hold both emoluments and seats in that House, "contrary to the express precept of our glorious Constitu-"tion, which says, "that no person holding any emolument "can have a seat in the House of Commons." Our Constitution also allows Parliaments only to be of one year's du-"ration, and that they are to be chosen annually by the peo-"ple; but they have elected themselves, and by their own "assumed and arbitrary authority have made Parliaments, "first, of three years, then of seven years' duration; and

"with the same lawless power they may make them per-
"petual. Alarming to relate, they have disregarded our
"Constitution, they have scoffed at her equitable precepts,
"they have trampled her and her sons under their feet. I
"would now ask you where is your freedom? Where is your
"liberty? When we reflect on such usage, it is enough to ex-
"cite us with ungovernable indignation. They are, accord-
"ing to our glorious Constitution, culpable of treason, and
"justly merit its reward. Will a nation which has been so
"long famed for its liberty and heroism, suffer itself to be
"duped any longer by a gang of impostors? No, it will not.
"The unanimity of our sentiments and exertions, agreeably
"to the Constitution, will once more dispel the cloud which
"eclipses the resplendent and animating rays of liberty; and
"will again make her shine forth in this once happy coun-
"try with unimpeded effulgence."

In order to remedy all this, universal suffrage and annual parliaments are recommended. Thus the publication states, (page 10.): "The House of Commons, in its original com-
"position, consisted only of Commoners, chosen *annually by*
"*the universal suffrage of the people.* No nobleman, no cler-
"gyman, no naval or military officer, in short, none who held
"*places*, or received *pensions from Government*, had any right
"to sit in that House. This is what the House of Commons
"was, what it ought to be, and what we wish it to be. This
"is the wanted change in our form of Government,—the
"Commons House of Parliament restored to its original pu-
"rity; and this, beyond a doubt, would strike at the root of
"the greatest part of the evils we groan under at the present
"day." At page 24. it states, "that the only effectual means
"that can be adopted to relieve the nation in some measure
"from its present distresses, are, by restoring the imprescrip-
"tible rights of the nation by a Reform in the representa-
"tion of the people in the House of Commons, and by an-
"nual parliaments; *and, until these take place, the people can*
"*entertain no reasonable expectation of ever having their con-*
"*dition improved.* But, should these salutary measures be
"adopted, they are confident that such a Parliament would
"always act for the good of the nation, and ensure the re-
"spect, confidence, and support of the whole body of the peo-
"ple. And it is not without justice that the meeting ascribe
"to the want of a fair and equal representation of the peo-
"ple in Parliament, all the wars, and their consequences, in
"which the people has been engaged for half a century past;
"for if, at the commencement of the first American war, this
"country had been blessed with a House of Commons cho-

"sen by the free suffrage of the tax-payers, would they have "acted consistently with the constitution of their own body, "to have gone to war with a people of the same origin and "language, merely to force taxes upon them without their "consent? Or would they have opposed the struggles of the "French nation, in endeavouring to obtain that freedom "which every Briton cherishes as his birth-right? And of "ultimately forcing upon them a hated Dynasty, contrary to "the wishes of nine-tenths of the people? The idea is truly "preposterous." In page 26. they explain what they mean by the tax-payers. "Considering that of two millions of in-"habitants, only 2700 have a right of voting for Members of "Parliament, the remaining 1,997,360, although tax-payers, "directly, or indirectly, having no more right of voting, than "if they were an importation of Slaves from Africa."

Now, Gentlemen, after going through all this long detail of grievances, you will recollect, that unless the reforms called for are granted, and the evils complained of are redressed, the people were told that their allegiance was to be thrown off; and if allegiance be thrown off, rebellion must follow. The result, therefore, of the whole that I have read is, that as the condition of the people never could be improved till universal suffrage and annual parliaments were obtained, so unless all this was granted, resistance must be made, and insurrection against the Government and the laws must be the consequence. But, Gentlemen, you know that to resist in this country unless universal suffrage be obtained, is just, in other words, to resist until the British Constitution be fundamentally overthrown.

I am not now prepared, Gentlemen, and it would be out of place for me, to enter at length upon this important subject, on which so many persons have been so grossly deluded. But I cannot avoid pointing out, in a few sentences, that at no one period, either in England or Scotland, did universal suffrage ever prevail; and in Scotland, in particular, from the great subdivision of property, the elective suffrage was never so extended as it actually is at the present moment. It is matter of notoriety, that the history of the British Constitution is to be found in the Feudal System, and that the Constitution of Parliament in particular, while it sprung out of that system, has ever retained features which strongly mark its descent. The immediate vassals of the Crown, the Great Barons who held of the King "*in capite*," were the first Members of Parliament. Originally there were no persons who possessed their seats in Parliament as representatives of others; nor were any such introduced into the

Legislature until the great estates, to which the duty of attendance in Parliament was incident, having been divided, and that duty had actually become a burden upon the small proprietors, the foundation of the representative system came naturally to be laid. The first step in the progress which seems to have been made was this, that charters of exemption from Parliament were frequently solicited and obtained, but those were declared to be illegal. Accordingly, it would seem next to have grown by degrees into a law to oblige the Great Barons only to attend in person, and to permit the Lesser to attend by their representatives. This is in truth no matter of conjecture; for by a statute of our Parliament, passed in 1427, the smaller Barons were excused from coming to Parliament, provided they sent commissioners from the shires.

In like manner, it is proved by the introduction to the laws of Robert III., that those burghs alone which held property *in capite* of the Crown, had the right of being represented in Parliament. It is, therefore, Gentlemen, a delusion to state, that universal suffrage ever made part of this constitution, or indeed that the right of the elective suffrage was ever broader or more extensive than at present. In fact, I know of no country in which universal suffrage, or any thing like it, ever existed, but in one, and that was in France in the year 1793. At that period, no doubt, there was an assembly elected by something like universal suffrage, and what was the result? The degradation of the nobility,—the dethronement and murder of the Sovereign,—the overthrow of the church,—and the extinction of religion. Is it those things, Gentlemen, that these prisoners would recommend? I have already told you, that liberty, as it was practised in France in 1793, has been held up by them as an object of admiration; and if you look to what is stated in the 32d page of their publication, you will find, that while they hold up to reprobation the higher orders of the State, the revolutionary fate of the Church does not seem to have been altogether out of their contemplation. "Their *reverend hirelings*," say they, "would convince you that you are suffering under the visitation of the Almighty, and therefore that you ought to be submissive to the chastening stroke." This allusion has a direct application to the established church,—its object is not more to dissuade the people from submission under their distresses than to bring the clergy and religion into contempt. It is to tell the people, that while their rulers were corrupt and oppressing them, the ministers of religion were not less base or more worthy of consideration.

But while the people are thus told in plain language to

throw off their allegiance,—while they are urged on to resistance to the Executive Government,—to overthrow the Legislature, and degrade the ministers of religion, the publication proceeds to hold out the most direct encouragement to rebellion. Look to the passage about the Army in page 32. "Your infatuated oppressors may harden themselves against "your requests; they may consider themselves as fortified "behind a veteran army, which, they may imagine, will "be always ready to support them, though in an unjust "cause, and by which they may conceive it possible to awe "a nation into silence and submission. But let them recollect that the army is still composed of *men*, and of *Britons*. "And shall they,—though they have exerted their valour in "the cause of fanaticism,—though they have been led to "fight the battles of oppressors, and establish the thrones "of tyrants; shall they, in violation of the privileges of free-"men,—forgetful of the glory of their country,—forgetful of "all that is dear to themselves,—contemptuous of all that "they love, and regardless of the fate of posterity,—shall "they turn their arms to destroy the Constitution of their "country? What! after displaying such feats of valour that "has immortalized them for ever,—will they stoop so low as "to become instrumental in the ruin of their country, for the "sake of a faction which has cast a deep shade of disgrace "over all the splendour of their victorious achievements? I "appeal to the army itself for a reply. I hear it burst like "thunder from man to man, from line to line, from camp "to camp,—No! Never! Never! We fight not for the de-"struction, but for the preservation of the rights and privi-"leges of our beloved country!"

Now, Gentlemen, you will please here to remember, that you are told, in the outset of the publication, that under the circumstances stated, allegiance has become forfeited, and is to be thrown off; but in the passage I have just read, as if the readers might have the army in view to restrain their patriotic fury, their fears are removed, and they are encouraged with the hope, that the army will not fight against them, but will join and co-operate with their projects of insurrection. Gentlemen, I ask you, can any thing more insidious,—any thing more wicked,—any thing more seditious be conceived or imagined? I will fairly tell you, that, in my opinion, there is no publication that has ever been brought before this Court of a more wicked and pernicious tendency, none better calculated to produce turbulence and commotion, than that which I have read to you.

Look to the publication for which Palmer was tried at the

Circuit Court at Perth in the year 1793, and was transported to Botany Bay; and although the times are not of that description which may render it necessary to inflict the same degree of punishment upon the prisoners as was awarded in that case, there is not any thing in it nearly so inflammatory, so seditious, tending so much to excite discontent against the Government, or to introduce turbulence and commotion, as there is in the paper which is this day brought under your consideration.

That paper, Gentlemen, I think it my duty to read to you from the records of the Court. It is in these terms:

"FRIENDS AND FELLOW-CITIZENS,

"You, who by your loyal and steady conduct, in these days of adversity, have shown that you are worthy of, at least, some small portion of liberty, unto you we address our language and tell our fears.

"In spite of the virulent scandal, or malicious efforts of the people's enemies, we will tell you whole truths; they are of a kind to alarm and arouse you out of your lethargy. That portion of liberty you once enjoyed is fast setting, we fear, in the darkness of despotism and tyranny! Too soon, perhaps, you who were the world's envy, as possessed of some small portion of liberty, will be sunk in the depth of slavery and misery, if you prevent it not by your well-timed efforts.

"Is not every new day adding a new link to our chains? Is not the executive branch daily seizing new, unprecedented, and unwarrantable powers? Has not the House of Commons (your only security from the evils of tyranny and aristocracy) joined the coalition against you. Is the election of its members either fair, free, or frequent? Is not its independence gone, while it is made up of pensions and placemen?

"We have done our duty, and are determined to keep our posts, ever ready to assert our just rights and privileges as men, the chief of which we account the right of universal suffrage in the choice of those who serve in the Commons' House of Parliament, and a frequent renewal of such power.

"We are not deterred or disappointed, by the decision of the House of Commons concerning our petition. It is a question we did not expect (though founded on truth and reason) would be supported by superior numbers.—Far from being discouraged, we are more and more convinced that nothing can save this nation from ruin, and give to the people that happiness which they have a right to look for under Government, but a Reform in the House of Commons, founded upon the eternal basis of justice, fair, free, and equal.

"FELLOW-CITIZENS,

"The time is now come, when you must either gather round the fabric of liberty to support it, or, to your eternal infamy, let it fall to the ground, to rise no more, hurling along with it every thing that is valuable and dear to an enlightened people.

"You are plunged into a war by a wicked Ministry and a compliant Parliament, who seem careless and unconcerned for your interest, the end and design of which is almost too horrid to relate, the destruction of A WHOLE PEOPLE MERELY BECAUSE THEY WILL BE FREE.

"By it your commerce is sore cramped and almost ruined. Thousands and ten thousands of your fellow-citizens, from being in a state of prosperity, are reduced to a state of poverty, misery, and wretchedness.—A list of bankruptcies, unequalled in any former times, forms a part in the retinue of this quixotic expedition; your taxes, great and burdensome as they are, must soon be greatly augmented; your treasure is wasting fast; the blood of your brethren is pouring out, and all this to form chains for a free people, and eventually to rivet them for ever on yourselves.

"To the loss of the invaluable rights and privileges which our fathers enjoyed, we impute this barbarous and calamitous war, our ruinous and still growing taxation, and all the miseries and oppressions which we labour under.

"FELLOW-CITIZENS,

"The friends of liberty call upon you, by all that is dear and worthy of possessing as men; by your own oppressions; by the miseries and sorrows of your suffering brethren; by all that you dread; by the sweet remembrance of your patriotic ancestors; and by all that your posterity have a right to expect from you,—to join us in our exertions for the preservation of our perishing liberty, and the recovery of our long lost rights."

Gentlemen, this is the publication which was held by a Jury in 1793 to be a seditious libel; and I ask you, whether from the beginning to the end of it there is any thing more offensive, any thing more calculated to alienate the minds of his Majesty's subjects from the Government and Constitution of the country, any thing better imagined for leading the people to the use of physical force and to open rebellion, than is to be found in almost every passage of the publication lying on the table. Sure I am, that there is not to be found from the beginning to the end of Palmer's address, a direct recommendation to the people to throw off their al-

legiance,—that there is no incitement to actual rebellion,—that there is no encouragement held out to the people, that if they rose to enforce the accomplishment of their purposes, the army would join them. But in the pamphlet upon your table, all this is done in the most plain and direct terms. The House of Commons is said to be corrupt, and not to be the representative of the people: the whole rulers of the country are stated to be corrupt, and while guilty of the most gross oppressions on the people, caring for nothing but their own base, sordid and tyrannical purposes. The clergy are said to be hirelings, falsely deluding the people with the notion of their distresses originating with Providence; and while the people are called upon to throw their allegiance to hell, they are encouraged with the certain hope of the support of a brave and victorious army.

It seems impossible in my mind, therefore, to doubt, that if the publication in Palmer's case was seditious, *that* now upon the table can be otherwise; that if the one merited punishment, the other can be innocent. On the contrary, I will tell you fairly, Gentlemen, in my view of the subject, the present is the worst of the two.

It is now proper I should tell you, Gentlemen, that the same course of defence which has been pursued to-day, was followed in the case I have just been speaking of. In Palmer's case it was said, and we were told to-day that it would be proved, that language similar to that used in this publication had been employed in petitions to the House of Commons, without censure or animadversion; that language not less strong was employed by Mr Pitt, and by the Duke of Richmond, and various other statesmen; and the inference which was drawn in the year 1793, and which, I presume, will be drawn to-day, is, that it was legal for Mr Palmer in his case, and for the prisoners in theirs, to employ the language which those statesmen have made use of. But my learned friend, (Mr Clerk), who was also of Counsel in the case of Palmer, was told then, and I beg leave to repeat it to you, Gentlemen, now, that the question before the Jury and the Court was not how often the crime of sedition had been committed, or how often it had been committed with impunity: It was not whether petitions containing seditious matter had been presented to Parliament, without the authors being punished: It was not whether Parliament had allowed seditious words to be used in its own presence without animadversion; and, last of all, the question was not whether the law officers of the Crown had allowed their duties to sleep, and passed over sedition without bringing prosecutions: But the question simply was

then, as it is now, Whether the crime attributed to the prisoners at the bar amounted in law to the crime of sedition, and whether, if it did, they were guilty of having committed it. If it were proved, that five thousand petitions, containing language equally as strong as that found in this publication, had been received by Parliament, or that the House of Commons had permitted language ten times stronger to be used in their own presence, that can never establish that the prisoners have not been guilty of the crime of sedition charged in this Indictment. The House of Commons has no power of making or declaring law, or of legalizing that which is contrary to law. It is but one branch of the Legislature, and if it permits language to be used reflecting on itself, on the Crown, or on the House of Lords, which every lawyer out of it holds to be seditious, which courts of law have found to be seditious, that is no reason why the same language, when employed out of doors with a view to corrupt the minds of the King's subjects, and to excite disaffection and commotion, shall not be repressed with the punishment of sedition.

In the course of the statement with which it has been my duty to trouble you, Gentlemen, and which I have put into as plain language as I could employ, I had occasion to mention to you, that in all cases of sedition the state of the times when the act complained of has been committed is to be maturely viewed and considered; that what may be innocently done at one period may be highly criminal at another; and that under one state of the country, language may be used, or a writing published, with impunity, which, under another, would render the author amenable to the arm of the law. Keeping this in your minds, Gentlemen, it is, I apprehend, impossible for you to forget the period when the speech in question was made, and the libel before you was published. It has been proved, and I freely admit, that at the time when all this took place the distresses of the country were not only great, but that the misery of the lower classes of the people had reached to an extent seldom experienced in these realms. Those calamities, overwhelming as they were of themselves, were, however, aggravated by this, that at the period in question they were converted, as all of you must recollect, into an engine for exciting discontent throughout the great body of the manufacturing population, who had then been thrown altogether out of employment. The most unprecedented exertions were then employed, by the circulation of inflammatory and seditious tracts, to excite the minds of the people against the settled order of things in the country, while, with a malignity before utterly unknown among us, and having a

precedent only in the means that were employed for preparing the people of France for the direful event of the Revolution, a simultaneous activity was employed in the dissemination of immoral, irreligious and indecent works, to subvert the principles and religious habits of the people. No doubt public conventions, as in 1793, were not held, because all things which had then attracted the eyes of the police and the administrators of the laws, and were repressed by the judgments of this Court, were carefully avoided. But a system no less dangerous had then been adopted in their stead. That system was to keep the whole population of the country in a state of ferment, by convoking meeting after meeting in the different manufacturing and populous districts, under the pretence of petitioning Parliament against abuses. At these meetings, by the use of inflammatory language of one description or another, the minds of the labouring classes had got into a state so unsettled, as to have become prepared for violence of any kind to which their leaders might direct them. In some quarters the effects of this system had become not less tremendous than those of its predecessor in 1793. In others, its consequences were even worse. We know the effects in Glasgow. You have lately heard the fruits of it in Manchester.

This situation of public affairs, Gentlemen, which is matter of notoriety, must enter deeply into your consideration in weighing the views and intentions of the prisoners in committing those acts which I have charged against them as inferring the crime of sedition. But, indeed, of the malignity of their intentions I think you can have no doubt. It is impossible for me, or for you, to look into the minds of men, and to discover what is the purpose at the bottom of their hearts. That can only be gathered from their actions. Now, if you take the time and the situation of the country when this speech was delivered, and this pamphlet was published; and if you weigh the terms of that speech, and the various passages of that work, the whole of which will be before you, and which I trust you will seriously consider, it seems to me impossible that you should hesitate in forming a decided and clear opinion that the purpose of the prisoners was to render the people disaffected to the Government, and to excite them to acts of commotion and rebellion. If such is your opinion, Gentlemen, it is your duty to find the prisoners guilty.

No doubt they have been represented as persons of good character. Be it so. With their character in general I have nothing to do, and leave them every advantage they may have upon this branch of the evidence. To myself it appears, that

what has been proved of their characters, however good in other respects, is against them in this case. In that point of view, I should state the evidence respecting their characters to you, were I to dwell upon it, which, however, I shall refrain from doing. Indeed I shall notice it no farther, than merely to mention as matter of curiosity, that evidence of the same sort was brought forward and insisted upon in the trials of 1794 and 1795. In fact, the defence in the present case seems modelled upon those cases of a similar description that have gone before it, and will, I trust, meet with the same fate.

Having thus, Gentlemen, detained you at so great length, I shall leave the case to you, perfectly satisfied with having done my duty in bringing it before you. It appeared to me, after a full consideration, to be a case which could not be passed over, as it was necessary to put limits to the circulation of the dangerous and seditious publications disseminating at present in every quarter of the country. It is for you to say upon the evidence, whether my opinion has been correct or not. I am satisfied myself that my opinion is right, and that the expressions charged in the indictment are seditious; and I have had to-day the satisfaction to hear that the Court thinks so likewise. You will afterwards learn their Lordships' opinion upon the evidence, as you have now heard mine. That I have thought it my duty to give you plainly and without varnish. But clear though I be on the whole case, I shall be satisfied with whatever verdict you may give, and I can have no doubt the country will be so likewise.

Mr Clerk, senior Counsel for Alexander M'Laren, then rose, and addressed the Jury in the following terms.

Gentlemen of the Jury, In the long and able argument which you have just heard, the Lord Advocate has attempted to convince you that both of the prisoners at the bar have been guilty of the crimes laid to their charge. I attend you for one of them only, Mr M'Laren, and shall leave the defence of the other, Mr Baird, to his own Counsel Mr Jeffrey, who is able to do the most ample justice to his client. Mr M'Laren is accused of having made a seditious harangue to the people assembled at a numerous meeting held in a field near Kilmarnock, and of having afterwards caused his speech to be printed, along with other speeches of a like tendency, as a pamphlet, which was sold and distributed in that neighbourhood.

Gentlemen, That Mr M'Laren was present, and spoke a few sentences at the public meeting already mentioned, is certainly true; but I hope to satisfy you, that, considering the occasion and circumstances under which it was delivered, the

speech (if speech it might be called) contained nothing seditious or otherwise criminal. As to the publication of the pamphlet, Mr M'Laren had no concern with it, and knows nothing of it. There is no evidence that he assisted in the printing or publication even of that speech, which is said to have been spoken by himself; and certainly there is no pretence for saying that he took a concern in the publication, sale, or distribution of the pamphlet. I hope, therefore, that I may disencumber myself of this branch of the accusation, as not affecting Mr M'Laren at all, and leave it, in so far as it may be thought to affect the other pannel, to the consideration of Mr Jeffrey, who will address you for him.

As to the criminality of the speech at the public meeting, much eloquence has been employed, and some points, both in fact and in law, have been strained to the utmost against the pannel, in declamatory comments on the wickedness of his supposed intention to blow up the flames of sedition in the multitude, as well as on the supposed illegal and dangerous tendency of his words, as being utterly subversive of the British Constitution and of all good government. But in making these violent and uncharitable strictures, it was forgotten that a public meeting having been called for lawful purposes, the occasion rendered it necessary that the pannel (who had been appointed to open the business) should make some remarks on the subject of public grievances. This is his defence. In addressing the people, he had no intention to excite them to sedition or rebellion, to any species of violence, or to any unlawful act. They had met with the fair and legal purpose of petitioning the different branches of the Legislature for relief against the grievances of which they complained; and in speaking of those grievances, the pannel did nothing more than assist in the previous deliberations necessary to ascertain the views and wishes of the people assembled, as to the nature of the applications that ought to be made. This defence, so important for the pannel, was opened at the beginning of the trial; but so far from attempting to refute it, the Lord Advocate did not, in the course of his very long argument, so much as allude to it: and you will see, Gentlemen, that the Indictment, unfairly suppressing the object and purposes of the lawful meeting at which the pannel made his speech, represents it, as well as the other speeches there made, as seditious and inflammatory harangues, uttered without the pretence of any fair or legal purpose. These circumstances are not a little extraordinary, if the Public Prosecutor really had hopes of being successful in his charge. With such hopes he should have argued the case as it stands upon the evidence: he should have attempted to answer the defence on the fact, or on the law, or on both; where-

as, by taking no notice of a defence unquestionably relevant, he either held it to be unanswerable, or intended to rely upon a doctrine (which can never be admitted, and which, indeed, the Lord Advocate himself did not directly maintain), that occasion and circumstances can make no difference as to the criminality of words,—that the same words must, if they are seditious on any occasion, be seditious on all occasions, without the least regard to the purpose or intent of the speaker. But against such an absurdity it is unnecessary to reason. Every one must allow that the same words may be highly criminal, or altogether innocent, nay absolutely required by duty, according to the different situations in which they may be uttered; and on this ground I maintain, that even if the words of the pannel could not have been spoken without criminality in other situations, they were justifiable as they were spoken to men assembled in deliberation about lawful and dutiful petitions, representing their grievances or complaints to the different branches of the Legislature. Nor does it appear of any importance that warm or intemperate expressions, not sufficiently respectful to their superiors, occasionally fell, in the course of their deliberations, from people in the lowest ranks of life, unable to express themselves with that decency which is required from men in higher situations, if it be certain, which it is, that they looked forward to no other result from their meeting, than the exercise of their unquestionable right to petition, quietly and peaceably, without disorder or disturbance.

Gentlemen, The right of petitioning has belonged to the subjects of this country, and even to the meanest of the people, from ancient times. Since the Revolution it has never been questioned; and immediately before that glorious event, it was attacked only to enable a tyrannical government to subvert the public liberty. But the attack was repelled even in the worst of times; and the first act of the government of King William and Queen Mary was to confirm the right of petitioning, as a franchise of which the people could not be deprived. It has ever since been considered as a right unalterably fixed by the fundamental laws of the State; and, accordingly, though the exercise of it is supposed to be sometimes unpleasant to the Government, yet no Administration, and neither House of Parliament, has hitherto thought proper even to discourage the people in the exercise of their right of petitioning. How many hundreds, or rather thousands, of petitions have been presented to the different branches of the Legislature within these few years, representing as grievances things which are not acknowledged to be such; and yet the petitions, as coming

from the people in the exercise of their right, have been graciously received by those to whom they were addressed. And so important is the right of petitioning, that every other right in the people has been supposed to depend upon it, inasmuch as the people, if deprived of that right, would be in danger of losing the protection necessary to defend them in their other rights.

It is obvious that a fair communication from the people of their grievances and discontents to the Legislature, which has the power, and whose duty it is to protect them, cannot be sedition, if they have a right to make such communication. If the people should petition Parliament without having right by law to do so, these petitions might be, and in almost every case would be seditious and dangerous, in raising or increasing discontents and disturbances; because every complaint of a public grievance has a tendency to create a public discontent, and this is illegal and seditious in every case where the law does not allow it. For the same reason, any violent complaint of public grievances may be seditious or illegal, where it is not addressed to persons having legal authority to take it into consideration and give relief. But it would be a solecism to say, that a petition to the King or to either House of Parliament, stating grievances, and praying for redress, is seditious, because, 1st, It is allowed by law; 2dly, The persons addressed have an authority to take the complaint into consideration and give relief. Petitioning is indeed considered as a means of removing discontents and preventing disturbances, not as a means of raising them; and this may be true in some cases, though it is not always so, and we have frequently seen a ferment of discontent much increased by numerous meetings of the people, called for the purpose of petitioning. But still the legal right of petitioning is unquestionable; and it must be supposed that this right, though it cannot be used without expressing discontent, and thereby communicating it among the people, and possibly raising it, where it had previously no existence, may be legally (and without any crime, or the fear of criminal prosecutions) used in every case whatever, even though the use of it should in some respects have a bad tendency; the utility and even necessity of preserving the right, counterbalancing the mischiefs which may be occasioned by the seditious or discontented spirit which may be raised by it.

But, Gentlemen, it must be plain, that if the people have a right to state their grievances in petitions for redress of grievances to the different branches of the Legislature, it follows as a necessary consequence that they have a right to state

these grievances in the plainest language; and even in what is commonly considered to be strong or coarse language in the description of public abuses, if they do not in their petitions violate that respect that is due to the Legislature; under that restriction, they may assert in their petitions that there are the grossest abuses, even in the Legislature itself. And you need not be told, that even petitions of that kind are occasionally sent from all quarters of the country, when discontents prevail among the people. A stranger to the peculiarities of the British Government might think it odd that petitions of this class, containing inferences of a nature apparently so irreverent, not only indicating an extreme degree of discontent in the petitioners, but directly tending to raise and disseminate the same kind of discontent through the whole of the kingdom, should be tolerated, especially where it is plainly the opinion, not only of the different branches of the Legislature, but also the opinion of the more sensible part of the community, that the petitions are very ill founded in their representations of grievances, and demand, by way of redress, new public measures or arrangements, which would not only be useless, but dangerous and even calamitous. Such considerations, however, have no influence, or very little influence, in the question, whether the people have right to present their petitions, and whether, when offered, the petitions ought to be received. On the contrary, it has long been held by the Legislature, that, as the people have right to petition for redress of grievances, so they have right to state what they consider to be their grievances, whether they are really grievances that ought to be redressed or not. The general rule is, that however unreasonable or unfit to be granted the prayers of the people in their petitions may be, it is not unfit to receive the petitions, and the people have a right to present them, a right that is unalienable.

But farther, Gentlemen, if the right of petitioning belongs to the people, they must of necessity have the right of deliberation upon the subject of their petitions, to consult with each other at public meetings, to be advised by those who are able to advise them, or think themselves able, upon the various points which may occur in considering what are grievances, and what are not; and if there are grievances, what are the remedies that ought to be proposed or prayed for in their petitions. With regard to the important claims which may be made in petitions to the Legislature, every man necessarily must have a right to meet with his fellows, either in small or in great numbers, and to discuss the matter with them. One man may think that annual parliaments are necessary; another that they would be hurtful or impracticable. On

this trial, it is not necessary for us to consider whether annual parliaments and universal suffrage are good or bad; and, on this occasion, I have nothing to do with these questions. But I say that it is not unlawful to petition for either. And generally, whatever the grievance, or fancied grievance is, it may lawfully be the subject of a petition to the Legislature; and for the same reason it may lawfully be the subject of deliberation and discussion, even in public meetings held for the purpose of petitioning. You will observe, that there can be no limits to this right of petitioning, and previously deliberating; for when it is limited the right is gone. The right is to present unreasonable as well as reasonable petitions. Or if unreasonable petitioning were unlawful, the Legislature alone is the judge of what is reasonable or unreasonable in petitions. If the right of petitioning could be restrained by the courts of law, there would be an end of the right of petitioning,—a fundamental law of this monarchy,—a law, the palladium of our other rights.

On the occasion of which we have heard so much, when the people in and about Kilmarnock met to consider whether they should send addresses to the Legislature on the subject of their grievances, various speeches were made, and we are told by the Prosecutor, that these speeches, and in particular the speech of M'Laren, were seditious. In regard to the question, whether or not his speech was seditious, he pleads that the right of petitioning necessarily implies the right of previous discussion. If this be true, apply it to the case before you. At such a meeting a speech may possibly be seditious, where it appears either that the meeting was called, not for its professed object of petitioning Parliament, but merely to afford opportunities to make seditious speeches;—or that though the meeting *bona fide* assembled for petitioning, the speech went beyond its proper bounds, and was seditious in statements not justified by the occasion. As to the first of these cases, there is not even a pretence for denying that the meeting in question was *bona fide* called for the purpose of framing petitions to Parliament. I refer to all the evidence which you have heard. It was a meeting collected for that purpose, and for no other, nor was any farther purpose in view.

The argument of the Public Prosecutor, and the evidence adduced, will apply only to the second case supposed, that the speakers at a meeting *bona fide* assembled for petitioning, had gone beyond their bounds, and deviated into sedition. But has this been made out against Mr M'Laren? His short speech, though coarse, was suitable to the occasion, as an ex-

hortation to petitioning; and nothing else. We were told, indeed, that this case is similar to that of Fyshe Palmer, who, many years ago, was tried for sedition, found guilty, and sentenced to transportation. But, Gentlemen, this is a total mistake. The case before you is very different from that of Fyshe Palmer, and from all the other cases which have hitherto been tried before the Court of Justiciary. It has been reserved for the present Lord Advocate to bring such a case as the present to trial, in which, if the verdict find the pannels guilty of sedition, the right of petitioning, hitherto unchallenged, seems to be attacked almost in direct terms. The case of Fyshe Palmer was that of a seditious libel, an inflammatory hand-bill, containing seditious language, without any proposal to petition Parliament. We were told that this case of Fyshe Palmer was defended on the same grounds that were stated in defence at the beginning of this trial; yet the Lord Advocate declined to meet that defence particularly, and bear it down by the triumphant authority of Palmer's case. There was no resemblance between that case and the present. Fyshe Palmer recommended an appeal on the subject of grievances, not to the Legislature, but to a mob, the scum of the earth, in the neighbourhood of Dundee, —to the sovereign authority of the multitude. The defence in that case was disregarded,—but what was it? It was said, that in this free Government it is necessary that the press should be free. It was said that the people must have freedom to attack public men, and must be entitled to publish, not treason, not sedition, in a palpable form, but their thoughts in a free and independent manner. It was added, that Mr Fyshe Palmer was not very sound in his mind. These were the defences for him. You will perhaps be surprised when I tell you, that my Lord Abercromby, who tried the case, held, in his speech to the Jury, that if a petition to Parliament had been in view, the libel of which Fyshe Palmer was found guilty would not have been of so aggravated a description,—would perhaps not have been considered a libel at all. "Much (he remarked) has been said of the purity of the intention of the society; it is said they had nothing in view but moderate reform. But, Gentlemen, you will consider how far that is consistent, either with the tenor of the address itself, or with what is sworn to by Mealmaker, who drew the first draught of it, and who swears expressly, that at that time he had not in his contemplation a second petition, and what was afterwards to be done would have depended upon circumstances. I much fear that here Mealmaker is telling the

truth, and that how they proceeded would have depended upon circumstances." In that case, you will observe, that a seditious libel was dispersed over the country without any consequence being contemplated but that of inflaming the minds of the multitude. On the other hand, we have been at pains to shew, that the pannels in this case were quiet, orderly persons, not concerned with any seditious societies, not connected with any political parties, only feeling distress, thinking they had grievances to complain of, and that they could better their situations by petitioning Parliament. They met together in the most orderly manner,—deliberated as it is usual to do in public meetings,—prepared resolutions,—prepared a petition,—and signed it,—and that petition, though couched in strong terms, was presented to the Houses of Parliament, considered, received, and laid on their tables. Is the right of petitioning, then, to be interrupted in this extraordinary manner, by bringing the petitioners into the Court of Justiciary?

Recollect that this was a meeting for considering the propriety of petitioning the Legislature, and that the meeting would have been altogether nugatory unless the persons then met had been allowed to state their opinions to one another. In the first page of this indictment, the pannel is charged with having wickedly and feloniously delivered "a speech containing a number of seditious and inflammatory remarks and assertions, calculated to degrade and bring into contempt the Government and Legislature, and to withdraw therefrom the confidence and affections of the people, and to fill the realm with trouble and dissention." Gentlemen, wherever the people are exposed to grievances, they necessarily must, when they meet to consider the means of redress, express their sense of these grievances; and I ask whether it be possible to state public grievances, especially grievances arising from such a source as over-taxation, without in some way or other reflecting on the Government. In the exercise of our right of petitioning against grievances, these grievances must be mentioned; and it is impossible to mention them, or even to allude to them, without bringing the Government into discredit. For example, let a petition be presented against over-taxation, whatever were the causes of the evil,—wars just or unjust,—unavoidable misfortunes, or misconduct in public affairs,—it is lawful to state the grievance. But can it be stated without affecting more or less, or attempting to affect, the public opinion as to the merits or demerits of Administration? Every public statement respecting public affairs has that tendency. But are the people to be interrupted on such grounds, in

the exercise of their just rights? It is of the essence of their right to complain of grievances, and therefore I apprehend you must disregard entirely those general expressions in the indictment charging M'Laren's speech as tending to bring the Government into contempt. The petitioners felt grievances;—they prepared petitions, and it is impossible to state a public grievance without throwing blame upon the Government. I do not mean to examine the question, whether there really was any blame attachable to Government; for it is the same thing in this case whether the petitioners were right or wrong in their statement. My defence is, that they were in the fair prosecution of legal views. Suppose no words to have been uttered but what would in other circumstances have been considered seditious, their having had a right object in view is a good defence. But every sort of obloquy has been thrown on the petitioners, without any notice of the lawful object they had in view, as if their object were to be laid entirely out of consideration.

Gentlemen, The legality of the object, and the situation in which the speeches were uttered, are the most important circumstances of the case. Every thing else is of a trivial and subordinate nature. But let us see what the pannel is alleged to have said. No positive evidence has been adduced to prove any part of his speech, except a few words at the end of the passage quoted in the Indictment, and, so far as I have observed, you have only the uncertain evidence of one person to these words. I shall remark upon the words in the Indictment.

"That our sufferings are insupportable, is demonstrated to the world." I do not say whether their sufferings were insupportable or not; but they appear to have been severe, and the people were met for the purpose of considering them, and to join in petitioning for relief. Here I presume is no sedition.

"And that they are neither temporary, nor occasioned by transition from war to peace, is palpable to all, though all have not the courage to avow it." I do not say that proposition is palpable to every body. Some are disposed to think that the calamity has been occasioned in consequence of the sudden transition from war to peace, and some dispute that proposition. Some are of opinion, that if we had continued the war, at an expence of a hundred millions a-year, we should have infallibly secured the national prosperity and greatness. I shall not attempt to settle these points, nor is that necessary to the present argument; and I beg leave to protest against the idea that I give any opinion upon them at all. Perhaps

Mr M'Laren may include me in his censure for my want of courage in not avowing my opinion.

"The fact is, we are ruled by men only solicitous for their own aggrandizement; and they care no farther for the great body of the people, than they are subservient to their own accursed purposes. If you are convinced of this, my countrymen, I would therefore put the question, Are you degenerate enough to bear it? Shall we, whose forefathers set limits to the all-grasping power of Rome; shall we, whose forefathers, at the never-to-be-forgotten field of Bannockburn, told the mighty Edward, at the head of the most mighty army ever trod on Britain's soil, "Hitherto shalt thou come, and no further;" shall we, I say, whose forefathers defied the efforts of foreign tyranny to enslave our beloved country, meanly permit, in our day, without a murmur, a base Oligarchy to feed their filthy vermin on our vitals, and rule us as they will? No, my countrymen." A commentary was made on this passage, though it is not proved that the pannel ever spoke it. The Prosecutor takes it for granted, without evidence, that the words were spoken. I am therefore not under the necessity of defending these words. But are they in reality so culpable? Are they seditious? Gentlemen, they are mere words of course, in expressing those public grievances to which they refer. Every child knows that they are the common and hackneyed terms used by petitioners for public reform, and (excepting one or two allusions, in which there is evidently no sedition), if they are not tame and feeble, they are at least neither seditious nor inflammatory. Every word applies to the professed object of the meeting in petitioning, and to no other object. The Prosecutor applies some of the words to the King, but this is a misconstruction quite unworthy of my Lord Advocate. Ministers, and the possessors of borough interest, are the vile Oligarchy, who are said to feed their filthy vermin on our vitals, and rule us as they will, and this attack was justifiable in the way it was made. What would avail the right of petitioning, if there was no right to petition against his Majesty's Ministers and their partisans? Ministers may be impeached in Parliament for their public conduct, and they may be complained of by the people in their petitions. Are petitions to Parliament against Ministers to be punished as sedition? What have we here? The opinion of the pannel that the Ministers have not acted in an honest way, or as Ministers ought to do. The opinion is expressed a little strongly, but it does not go beyond legal bounds. The petition was afterwards laid before Parliament, and was received with respect. Now the question before you is not,

whether the Ministers are culpable or not,—not whether Lord Castlereagh or Mr Vansittart might bring an action for a libel or defamation,—but whether there is any sedition in this speech. I ask you, whether there is any sedition in complaining of these Ministers? Sedition is an attack on the Sovereign of the State,—an attack on the Government, not on the Ministers of the Government. You may attack the latter in any way, without being guilty of sedition.

But farther, as to the passage about the Oligarchy. It is generally understood that a few persons, not exceeding 300, are possessed of an influence in the House of Commons that is very pernicious to the State. This is the Oligarchy, the government of a few by unconstitutional influence, alluded to in the pannel's speech. Is it sedition to take notice even by allusion of such a public grievance? Is this sedition? Against whom is it sedition? against the King? against the Lords? against the Commons? against any branch of the Legislature, or against the Legislature taken as a whole? It is sedition against no person or legal authority whatever. It is indeed directed against the Oligarchy itself, which, in the opinion of the petitioners, is the worst enemy of the King, Lords and Commons. The King, Lords and Commons ought to be independent; and, if an unconstitutional influence rules over them, is it sedition to complain of that influence? Every friend to the Constitution will complain of it, if he supposes it to exist. I apprehend there is nothing in this part of the charge; and while M'Laren denies having used these expressions about our rulers, I say there is no sedition in them. I would say so, even if the words had been used where no petition to the Legislature was in contemplation. But, considering that the meeting was called for that purpose, nothing can be more unquestionable than that such language was not seditious.

I come now to the last of the words quoted in the Indictment, and I hope to satisfy you that there is nothing seditious to be found in them. Allow me here to remind you of M'Laren's situation when he made this speech. It has been proved that the task of opening the meeting was imposed on him, contrary to his inclination, and came upon him rather unexpectedly. It was indeed proposed to him eight days before the meeting, but he was unwilling to undertake it, and immediately before the meeting he pressed Mr. Samson to take the business off his hands. An hour before the meeting Mr M'Laren was again urged to open the business; and being in some measure compelled to it, he retired for a very short time, and made some notes of his short address to the meeting. You will see in the whole proceeding the most evident marks of

haste. It is not proved that the last sentence was written in his notes. On the contrary, it was not written. He was placed on what is called the Hustings, and delivered his speech during a storm of wind, rain and hail; from the noise of which, and particularly from the rattling of the hail on umbrellas, it was almost impossible to hear what he said. Besides the words contained in his notes, part of which he spoke, and part of which he omitted, he spoke other words which were not in his notes. What these words were is uncertain, as they could not be perfectly heard. A single witness told you he heard and recollected them, though he could not recollect any other words of the pannel's speech. There is no great reason to rely on the recollection of the witness, though there is much reason to presume that the words had not the meaning given to them by the Public Prosecutor. The words in the Indictment are, "Should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance. Yes, my fellow-townsmen, in such a case, to hell with our allegiance." But the passage is in different words according to the evidence of Mr Finnie, whose recollection of words, delivered in the midst of hail and wind, and the noise of umbrellas, while nobody else could hear what M'Laren was saying, is the only evidence for the Prosecutor of the sedition. Another witness said there was something in the speech about hell and allegiance, but he could give no intelligible account of the passage. Now, is it probable that the pannel should have so expressed himself, or is it proved that he used the words imputed to him? You see the rest of the speech does not appear in the same mutilated form with the passage given by Mr Finnie. There is reason to believe, therefore, that the passage so mutilated is not the passage delivered by M'Laren. And yet you are called upon to rely implicitly upon Finnie, a single witness, to the words of a speech, though there was such a noise when it was delivered, that persons near the orator could not hear him: And this part of M'Laren's speech is said to have been seditious. Gentlemen, you must always bear in mind the occasion. No other passage of the speech was seditious. M'Laren was recommending a petition to the Prince Regent. He was speaking of his Royal Highness in the most respectful way, and in a warm strain of loyalty. "Let us lay our petitions at the foot of the Throne, where sits our August Prince, whose gracious nature will incline his ear to listen to the cries of his people." Here is the fondest expectation of being listened to. But it is natural to mingle, with the kindest and most dutiful sentiments, the severity of doctrine and reasoning, and, on this occasion, it is possible that the rigour of our constitutional law for ex-

treme cases may have suddenly occurred to the mind of the panel. We all know that our constitutional rights and duties go hand in hand. This has been stated in every possible form in which a proposition of the kind can be stated. At the Revolution, the Lords and Commons held James to have abdicated the throne, merely because he left the country, and the illustrious House of Hanover was at last established, because James had failed in the duties he owed to his subjects. Again, in Scotland, it was not held that James had abdicated, but that he had *forfeited* the throne in consequence of his proceedings. Speculations on the subject indeed are delicate, and ought not to be much indulged in. But what was more natural than for M'Laren to urge the propriety of petitioning, by stating that the petition would of course be received, and that if the Regent did not regard the cries of all his people, he would forfeit their allegiance. M'Laren did not say it was the duty of the Prince Regent to listen, right or wrong, to the petition then proposed. In this way the whole passage is not so unreasonable; and where there is an uncertainty what the very words were, the most favourable interpretation must be given to them. But, in the worst view of the words, they import merely that in an extreme case, which could not happen, allegiance would not be due, and such an alternative does not import sedition. If the words were imprudent, they were not seditious. They might indeed have been without a vindication, if they had been used at a public meeting where no such words were warranted by the occasion, and where the meeting was not for the purpose of petitioning Parliament. But consider the time when the words were used. The recommendation of my Lord Advocate to this effect was quite correct, and I desire you to keep in mind that there was a petition at the time under consideration, and that expressions might then be more allowable than at another time. Gentlemen, the sacred right of petitioning is the bulwark of the right of free discussion. Discussion may be allowed preparatory to a petition, that would not be endured at any other time. Discussion is necessary on all such occasions. Free words may on these occasions be used when speaking of ministers, and generally of public men, as well as of public measures. Are not these propositions self-evident. Supposing it were asked, whether any of you have a right to write a letter to a correspondent, and send it by the post. The answer would be, you have a right to do so; there is no law against it. But what if you have no right to use pen, ink, and paper; no right to lift the pen, to put it in the ink-holder, or apply it to the paper? These acts have the same relation to writing a letter,

that the right of canvassing what are grievances has to the right of petitioning. You have the right of petitioning, which includes the right of meeting and canvassing the subject of your petition. Thus the right of discussion is presupposed in the right of petition.

Gentlemen, As to the language that is legal and warrantable in petitioning and previously discussing the mode of petition, it is well known that Parliament may be approached with language as strong as any part of this pamphlet, and certainly stronger than any part of the speech of the pannel. As evidence of this, take the Votes of the House of Commons, and you will find more violent and bitter expressions of grievances, than any in this publication. I may read one or two of these petitions, which have been appointed by the House to lie on the table, and which the House would not have thought itself bound to receive, if they had considered the language as improper in a petition to Parliament. I hope Mr Grant will be allowed to read them for me.

Mr Grant.—This is an extract of a petition from Bristol, presented to the House of Commons on the 29th January 1817. *(Reads from the Votes)*, "That no man of sincerity will affect to believe that such a squandering of the resources of the country for such purposes, and that such a destructive power in the managers of paper money, would ever have existed, if the members of the House of Commons had been the real representatives of the people, instead of being, as they notoriously are, the mere tools of an ever-grasping and tyrannical Oligarchy of boroughmongers; that it is in vain to hope for any real remedy, for any solid and substantial relief, except through the means of such a reform in the Commons or People's House of Parliament as shall ensure to the people the speaking of their will through the means of representatives annually chosen by all men who have attained the age of twenty-one years, seeing that all men pay taxes, and that all men have lives and liberties to protect. —Ordered that the said petition do lie on the table."

On the same day, a petition from the township of Quick was presented and read, but it appears to have contained expressions which were deemed offensive, for *(reads from the Votes)* "a motion being made, and the question being put, that the said petition do lie upon the table, it passed in the negative."

On the same day, the address and petition of the town of Oldham was presented and read, in which are the following expressions: *(reads)* "In the midst of all these calamities, the ministers, in conjunction with an unconstitutional and corrupt

House of Commons, have proceeded to vote away a great part of the public money to superfluous and unnecessary purposes, the whole of which evils the petitioners ascribe to the want of a real, unbiassed, free, lawful, and annual election of the members of the Commons House of Parliament; instead of which, the petitioners see, in that House, by Peers and other Borough-mongers, hundreds of its seats usurped; that numbers more of those seats, through the gross venality of monopolizing corporators, are notoriously bought and sold, and a large portion of the members of that House, who ought only to sit there as representatives of the people, are nevertheless placemen and pensioners of the Crown, and receive, in salaries and emoluments, upwards of L. 200,000 a-year out of the taxes; wherefore, the petitioners feel it to be their duty to protest against that corrupt and factious usurpation of seats in that House, by which freedom is destroyed, and our once happy country threatened with slavery, starvation, convulsions, and ruin; for, in an usurpation which inflicts on the whole community taxation without representation, nought but despotism can be discovered, nought but ruin can proceed. And the said petitions were ordered to lie upon the table."

Immediately after which, it appears that *(reads)* "A petition from Ashton-under-Line was presented and read, containing the same allegations and prayer as the petition of the inhabitants of the township of Quick, which was this day presented to the House. And a motion being made, and the question being put, that the said petition do lie upon the table, it passed in the negative." And another from the inhabitants of Delph was presented; *(reads)* "And a motion being made, and the question being put, that the said petition do lie upon the table, it passed in the negative."

On the 31st January, a petition from the town of Halifax was presented and read, setting forth, *(reads)* "It is now notorious that the people of this kingdom do experience flagrant wrongs and great misfortunes, because their birthright of making their own laws has, through the decay of ancient boroughs, as well as through fraud and usurpation, been taken from them; for it is universally known that the nation are not represented in the House;—in this complication of decay, injustice, and wrong, in this ruin of the Constitution, whereby the people have been defrauded of the self-preserving power of making, through real Representatives, their own laws, the House must see the causes of which all the present calamities of our country are the effects: here, and here only, the cause of War, here the cause of Public Debt, here the cause of an intolerable taxation.—The law, through the resistless power of those who have usurped the

seats in the House, assumes a severity revolting to humanity, and is carried into execution by the bayonet; wherefore the petitioners feel it to be their duty to protest against that corrupt and factious usurpation of seats in the House, by which all freedom is destroyed, and our unhappy country is threatened with convulsion, slavery, or subjugation; for in a usurpation which inflicts on the whole community taxation without representation, nought but despotism can be discovered."

"A petition of the there-undersigned inhabitants of the town and neighbourhood of Halifax, in Yorkshire, was also presented and read; containing the same allegations and prayer as the last preceding petition.—And the said petitions were ordered to lie upon the table."

There are many other petitions which I may read couched in equally strong language.

Mr Clerk.—I think enough has been read, and we need not fatigue the Court and the Jury.

Mr Grant.—Particularly on the 12th of March I see there are several petitions received in the same terms with the petition from Halifax.

Mr Clerk.—This is but a specimen of the petitions which have been sent to and received by Parliament. Such are not indeed petitions which the House of Commons is disposed to grant. But the privilege to think and talk on these matters, to take advice about them, to hold meetings about them, and to make them the subjects of speeches, resolutions, and petitions, unquestionably belongs to the people of this country. The right of petitioning is so sacred, that the most overbearing and arbitrary administrations have never proposed to restrict it altogether. You will pause, then, Gentlemen, before you pronounce a verdict, which, as the Public Prosecutor demands it, would, in terms almost direct, be a verdict against the right of petitioning: For the same argument that has been urged against the pannel would apply against speeches relative to petitions complaining of any other public abuses, if the distresses of the people should be never so great —abuses against which no remedy could be looked for but by petitioning the Legislature, and stating the grievances in the language of truth. Were such a pestilence to be introduced in this part of the island, as prosecutions to subvert the right of petitioning, the consequences would indeed be calamitous. The right of petition, so tenaciously held by our ancestors, may be still more necessary to our posterity. The

present case ought not to have been prosecuted, even if the words had been more inflammatory than they are. It has no resemblance to a case of sedition. In the case of Muir, and a variety of others, in which men were tried and punished for sedition, a wicked purpose was always clearly established, and the accused had no pretence for saying that they looked toward the Legislature for the accomplishment of their objects. The moment that such a *bona fide* purpose is in view, the subject has a right to express his opinion, and he cannot be subjected to punishment for it. If he could be punished, the right of petition would be at an end.

Gentlemen, the pannel is a person of irreproachable character, and his former history, and in particular the loyalty and public spirit of his conduct on all occasions, leave no room for any presumption that he would be inclined to seditious practices.

Mr Clerk then read the following Certificates:

Kilmarnock, 2d April 1817.

This is to certify, that Alexander M'Laren has resided in my house as a lodger for the space of seven years against May next, behaving himself soberly and honestly, free from wrangling or quarrelling, and as a loyal subject, speaking respectfully of Government, and all other rulers in their different stations, so far as is known to me. JOHN STRATHERN, Wright.

Kilmarnock, 2d April 1817.

This is to certify, that Mr Alexander M'Laren has resided in Kilmarnock for upwards of eight years, and has been several years in habits of intimacy with the undersigners; and during that time, to the utmost of our knowledge, has behaved in a sober and peaceable manner; at all times has been a loyal subject, a firm friend of order, and a habitual respecter of authority.

JOHN STRATHERN, Wright.	GEO. SMITH, Grocer.
JAMES ALEXANDER *sen.* Weaver.	JOHN PAXTON, Brewer.
JOHN BUNTIN, Weaver.	JAMES CRAIG, Weaver.
WM. HOWIE, Builder.	JAMES BUNTIN, Shoemaker.

Mr JEFFREY, Counsel for Mr Baird, addressed the Jury in the following terms:

You are aware, Gentlemen, that it is now my duty to address you on the part of the other pannel; and, after what you have already heard, and the ample opportunity you have had to consider the whole of the evidence during the trial, I flatter myself I shall be able to discharge this duty

without encroaching much longer on your time. I wish, first, to address a word or two to you on the facts of the case, and to lay before you, in a detached form, those that relate to this pannel, THOMAS BAIRD,—after which I must trouble you with a few words on what I conceive to be their reasonable and legal import.

It is one comfort in this case, surrounded as it is with discomforts and anxieties, that with regard to the facts, there can be no reasonable doubt in your minds; nor am I aware indeed, that upon this part of the subject there is any great contradiction between the opposite sides of the bar. And, therefore, I shall give but a slight abridgment of the facts, separating those which apply to this individual, the truth and import of which I do not conceive liable to any question.

You will remember, it has been put in evidence before you, that he is a man in a good condition in life, which is denoted indeed by his appearance. He is in reality a most respectable person, who had long resided in the town, among whose citizens he had taken an active part on this occasion; and, even in the judgment of those who differed from him in opinion on political subjects, and who, from their official situation, had the power and the duty to prevent him from committing any wrong, he was universally esteemed incapable of harbouring evil intentions against the Constitution. He was entrusted with military and civil offices, which are only committed to known and tried hands. He is a person past the early period of youth, when great imprudence may take place, notwithstanding principles generally correct. He has a young family dependent on him for their subsistence; and earns his livelihood by a trade which depends for its success on his good character and conduct. It has been proved that his general conduct is not only correct but exemplary, and that he has been in the habit of communicating and discussing his opinions on politics with a variety of persons who did not concur in those opinions; and therefore, while the other pannel, from being less known in the town, could not have his character so generally spoken to, we who have been entrusted with the defence of Baird, and who being less circumscribed in this respect, could afford to make a selection of our witnesses, have purposely abstained from taking the evidence of those who concurred in his political sentiments, or bringing one reformer to testify in favour of another, and have thought it better to take the evidence of those only who were naturally influenced by opposite motives and principles. You heard from them that this person has always been remarkable for the frank-

ness with which he delivered his opinions; and that, even when expressing them with the heat and exaggeration inseparable from such discussions among parties who do not agree, they always appeared to them perfectly innocent and fair. Brown, Wyllie, and Miller, from profession and situation the most figuring men in the town, and the most notoriously adverse to any change in the established order of things, all say he uniformly maintained such language as impressed their minds with a conviction that he was strongly and decidedly attached to the constitution of this empire, though he wished for a reform in the Commons House of Parliament: That he was a mild person, and of a character incapable of exciting, in any way, any degree of disorder or discontent against Government.

I am aware, that a good moral character is not in general an answer to a charge of crime, if there is distinct proof of its having been committed on any particular occasion; and that an allegation by the prosecutor of a wrong committed by a person whose moral character previously stood untainted, will, if supported by positive evidence, lead to the punishment of that person, notwithstanding such previous good character. But I submit to you, that in a trial like this, depending mainly on the question, whether the pannel harboured a wicked, felonious, and seditious purpose,—or, if he did not harbour such purpose in its obvious and naked form, whether he was chargeable with that disregard of the safety of his neighbour, or that recklessness as to consequences, which, in the eye of law, is considered a moral wrong, and punished as wicked and felonious: I say, in a case in which every thing depends on this; where the matter is intrinsically of a doubtful nature; where it is a question whether a person has gone beyond a pardonable vivacity of discussion, and ventured to use language which the law holds to be demonstrative evidence of improper purpose,—if, in these circumstances, you find a man standing in such a situation as the pannel,—not tempted to expose himself to public view,—not gifted with powers of eloquence,—no way accustomed or inclined to try his talents in that way,—carrying on a thriving trade, which he has no disposition to leave,—and standing comparatively uninjured, while others around him were on the verge of ruin,—of peaceable habits,—of moderate political principles;—under such circumstances, I say, you are bound to presume for his innocence, unless criminal intention be clearly and unanswerably established against him. The legal presumption of innocence, in such a case, amounts almost to a moral certainty.

In this situation, Mr Baird, placed as he was in the heart of a manufacturing district, could not fail to be a spectator of very general and very deplorable misery. A sharer in it he must also have been in some degree, as all persons must be who are connected with the sale of commodities from which purchasers are gradually withdrawing. Although the causes of the general distress did not so immediately or directly affect him, yet he heard and witnessed those clamours and complaints, which certainly, in this part of the island, have not hitherto broken out into those rather compassionable than criminal excesses, to which the infirmity of human nature, rather than the malignity of individuals, or of any class of the people, may be hurried in seasons of such unprecedented calamity. He could not help hearing those complaints, and listening to the remedies which were proposed for those evils; and it appears, that he concurred in the opinion which some persons have held—and he confessed it to all with whom he had occasion to converse—that a great part of the evils arose from a defect in one of the great bodies of the Legislature,—from want of due communication of sentiment between the body of the people, and those whose function it is to express their sentiments, and watch over their interests. That he entertained such an opinion, there is no doubt. Not going so far perhaps as thinking that a reform in the representation of the people would remove the evils then existing, he, in common with many persons, was of opinion, that it might tend at least to prevent their recurrence. He certainly did favour the professed object of the meeting, and in this, if his guilt began, it also ended. He undisguisedly gave his countenance to a general meeting for petitioning the three branches of the Legislature, for redress of grievances, and reform of the Commons House of Parliament. His conduct in this particular was worthy of the sincerity with which it was dictated. Associated with some others whom you have seen, they agreed as to the propriety or expediency of encouraging this method of proceeding; and at the same time, they determined not to take this step of calling a meeting for petitioning the Legislature, if it was opposed, or likely to produce any opposition, in an official form, on the part of the local magistrates. Accordingly Mr Baird, as one of the most respectable of the Committee, (all of whom seem to have been cool persons enough when the heat of the action was over, and the field deserted), waited on the Provost; and the Provost told you, that though he disapproved of the meeting, he did not think he had power to prevent it. He seems actually to have gone out of town when it took

place:—so far was he from thinking there was any danger to be apprehended: And he was justified in his opinion from the result—there was no tendency to tumult or disorder.

At that meeting, Mr Baird, no doubt, attended. He was there and heard the speeches that were delivered; some of which undoubtedly contain very indecorous and improper expressions—expressions which it may have been preposterous to utter at a meeting convened for lawful and constitutional purposes. But if persons go to such a meeting at all, they may expect that preposterous expressions will be used, on both sides perhaps of the question. But is a man to be punished for sedition, if he accidentally hear seditious language employed by another person? Not only was the measure of calling a meeting for petitioning perfectly lawful in itself, but the behaviour of those who attended seems to have been orderly, decent and exemplary. I do not know whether your views concur with those of Mr Baird, but thinking as he did on the subject, he acted properly. It is to be taken for granted, that the petitioners were sincere in their opinion, and that in taking those measures, they thought they would be of great effect in producing good.

At that meeting, then, Mr Baird did not speak. He heard the speeches in question,—but as that could not of course taint him with guilt, I am sure you will go along with me in thinking, that up to this point there was nothing culpable in his conduct; and therefore the very beginning and ending of the criminality imputed to him consists in his having afterwards (I cannot say concurred, but) submitted to a resolution forced on him by the majority of those persons, with whom he was associated in an application to Parliament, for having these orations printed, in a full, true and particular account of the whole proceedings. This we stated in the outset, and it has been proved, without contradiction, by the testimony of a variety of witnesses. In the examination of the several witnesses, no indication ever appeared,—no hint, even in the most distant manner, ever presented itself, that the publication of the speeches was made with a view that seditious doctrines should be propagated, or that the contents of the work should be studied by persons at a distance. The publication is clearly proved not to have had any such ambitious object; but to have been made in the humble view of securing a little paltry gain,—to defray the expence of nailing up a few boards for the accommodation of the orators, and providing a few sheets of gilt paper for three or four petitions to be transmitted to the Prince Regent and the Houses of Parliament. It occurred to the petitioners, that the only means for

defraying this heavy expence was to print an account of their proceedings,—that among their neighbours, whether those who agreed with them, or were opposed to them in political opinions, they might sell as many copies as might raise the sum which was wanted. Through the whole transaction there is not the least vestige of any desire to have the work read or admired, either for mischief or glory. The only object was to get a small number sold; and accordingly they seem all to have been sold,—without so much as a single copy having been given away. Mr Baird, into whose hands, as one of the committee of the petitioners, a number of the copies were impressed, got rid of them, it is true, with more facility than another man who was examined to-day did of his copies. But this was merely because he keeps a well-frequented shop, not because he was in any way zealous for their circulation. The nature of Mr Baird's trust and management in the business were proved to you by his own shopman, and his own declaration; and it has been proved, that if he got rid of every one copy he was possessed of, shopmanlike he exacted his groat for every one of them which he sold. The printer said that about 400 copies were printed. Some remained in the hands of members of the committee who did not get them sold. They were not sold to booksellers; because the petitioners could not afford to pay booksellers' commission: they were sold for a particular purpose, which I have specified, and were sold in the cheapest way. Some of them were sold in a grocer's shop, where they might be of use to wrap up goods that were purchased; other members of the committee, however, could not sell their copies, because they could not perhaps be of such immediate use to the purchasers. You see the nature of this transaction then, and you must now be aware that it is conformable to the statement which was given of it at the beginning. Mr Baird took no step disconformable to his general character of a quiet, modest, honest, well-disposed, good man; he made no speeches, but disapproved of various speeches and passages in speeches, (which fact has been fully made out), as harsh and offensive; and these are considerations which certainly are of importance in determining whether he is guilty or not of sedition, as charged against him in this indictment.

These are the whole of the facts of this case; and you will be pleased to add to these facts what is proved to you by the evidence, and which the dates and the documents themselves instruct, viz. that all this took place publicly. It was known to His Majesty's Advocate, and all the lieges, that this was done so long back as December 1816; and you have seen that

400 copies of the publication were all that were printed. I don't think you will imagine it is very likely the authors and printers expected a great sale. None of the authors were much known in the literary world, and none of them, I think, professed themselves to be politicians. The object was to sell copies to the curious country gentlemen and the gossips in the neighbourhood. It was reasonable to think too, that some people might have this curiosity, who were prevented by the weather from gratifying it, by attending at the meeting; for you will recollect, that the speeches were spoken in defiance of the angry blasts of heaven,—in the midst of hail, snow and wind, and notwithstanding the opposition of the elements. Petitions in conformity with these speeches were engrossed; and it is not denied, nor can there be any doubt of the fact, that they were presented, and that they were received with the usual civilities with which persons in those high quarters are wont to receive such communications.

All this was done months ago, and at a time when no alarm about sedition obtained here or in any other quarter of the kingdom; and Mr Baird was allowed to sell his commodity of pamphlets, and to converse with his neighbours about them, without any body hinting that he was in any danger, not from what he was doing, but from what he had done weeks before. But, after that, some odious proceedings took place in another quarter of the island. Certain mobs had excited considerable alarm in the mind of the Legislature, and of the inhabitants of the metropolis, where a large assemblage of people is easily convened, and disturbance easily excited. They did commit some little outrage, and occasioned some fear for the peace of the city. This fear was propagated to the extremities of the empire,—and then the vigilance of the Public Prosecutor in this country goes back to a former meeting, in a remote quarter, which had not been attended with any tumult, and had not been followed up with any the slightest criminal consequences. A book, consisting of foolish, ridiculous specimens of rustic oratory is on this occasion brought forward,—and this quiet, esteemed and trust-worthy man is brought to your bar, and arraigned for having wickedly and feloniously circulated sedition.

We come now to consider what is the import of the facts in this case, and what is the verdict you ought this night to pronounce on the person, whose character through life, and whose conduct upon one occasion, have been detailed to you in evidence to-day: The question is, Whether the evidence to which I have referred is such as to compel you, contrary

to that general presumption of innocence which law establishes for every accused person,—contrary to that special presumption of innocence which the whole tenor of the defendant's life and conduct morally establishes in his favour,—whether that evidence, I say, be such as to constrain you to say that his conduct upon this occasion originated in malignant and diabolical purposes,—purposes, from the success of which he had every thing to lose and nothing to gain, but was to be merely an inglorious stirrer up of sedition in the first instance, and a victim to its guilt and insanity in the second.—The question I say is, Whether the evidence goes to shew that such is the character of his offence,—that such folly must be imputed to a man of sense and character, and that you cannot help saying, on your oaths, that he disregarded all consequences to others, to his country, and to himself, and was determined to stir up sedition and disturbance.

The essence of this, and all other crimes, consists in the moral defect by which they are engendered; and therefore it is, that every criminal indictment necessarily charges that the offence for which it threatens the accused person with punishment was committed *wickedly and feloniously*; and I believe almost every indictment for crimes of this description contains, in more express words than occur here, an allegation that the acts set forth and described were done *with an intention* to excite sedition and disturbance. It is the intention, in short, in which the crime legally and morally consists. I do not find fault with the omission of that in the indictment. I rely on the candour and propriety, and wisdom of the Bench, to give you the requisite information on the subject: and I am sure you will be told that the words indispensably inserted in this indictment are in their own statement equivalent to a direct allegation of intention in the commission of the crime charged; and that a more particular charge of intention could not have served any purpose.

When I say this is a necessary part of this, and of all other charges of sedition, you will give me so much credit as to suppose that I do not mean to say that the Public Prosecutor is bound to bring direct and positive proof of a criminal intention having been actually expressed, or that it is not competent for him to argue that the nature of the acts themselves,—the circumstances in which they were committed,—the situation of the party,—the temptations to which he was exposed,—his whole conduct before and after the time he committed the acts,—the general and well-known complexion of the times when the acts were done, are to be taken into consideration, in forming a judgment as to the in-

tention with which the acts were performed.—Such considerations cannot but afford evidence of the purpose and intention; and in questions with regard to almost all other crimes, this inference is generally so plain and necessary as to make the task of the Jury comparatively easy. If a man aim a blow at another, and knock out his brains,—if a person break in at night and rob a house, or if he forge a bill, and draw money for it from a bank, it is vain to say there is a necessity to bring evidence beyond the fact itself, to prove a malignant purpose in the one case, or a purpose of fraud in the other. But observe the character of sedition as defined, or attempted to be defined, by my learned friend, and, indeed, by all the lawyers. I am not finding fault with my Lord Advocate for not properly defining sedition, because it is one of the disadvantages attending such a case, that a sufficient and satisfactory definition is not to be easily found; and therefore we are constrained to go to a large and general consideration of the specific facts, from which the criminal intention is to be deduced. What, then, is sedition? I do not object to the Prosecutor's statement on the subject. He described it generally as any act, writing or speech, the intention and probable effect of which is to excite disaffection towards the Government, and tumult and commotion in the country. Now, you will observe here, that, in order to constitute sedition, it is not absolutely or indispensably necessary that the Prosecutor shall bring proof of discontent or disturbance having been actually excited or having followed in consequence of the acts charged. Nor should I think it right or safe to make the fact of having excited such discontent or disturbance the criterion for the crime of sedition; for there may be many speeches and writings by which tumults and disaffection may eventually be excited, without any such intention on the part of the speaker or writer. God knows there have been many measures adopted by Government here and elsewhere, and probably believed by them at the time to be most expedient and proper, which have led to disaffection and disturbance, to dreadful wars and most sanguinary remedies. Here, then, we feel at once the practical difficulty of applying the definition of the crime which is here charged. Sedition is said to consist in any acts by writing, speaking, or otherwise, that indicate, with sufficient clearness, a purpose to divert the affection of the people from Government, and to excite hatred and dislike against the said Government, leading to rebellion, tumult and public confusion. We have evidence of this when a speech or writing actually produces such an effect. That is the most certain, and perhaps the only sure proof that a speech

was uttered for such a purpose,—that it has done so. But I do not say that this is absolutely necessary. It is enough if there are acts established which are clearly and unequivocally intended to produce such an effect; But all this just places us under the necessity of judging and conjecturing as to the intention,—not upon such evidence as the shooting a man through the head is of intention to kill; but by the exercise of a sound judgment, and a delicate discrimination upon nice and delicate questions of politics and morality; in the course of which we must endeavour to divest ourselves for the time of all our cherished prejudices and partialities, and to judge of a probable intention, from facts, as to the import and character of which perhaps no two men will agree. In order to determine whether disorder and discontent were intended to be excited against the Government, we must consider whether the objects that were professed to be in view,—the means that were adopted for their accomplishment,—the words that were used,—the situation of the audience, and the result of the measures adopted, do all or any of them amount to a proof of such intention, and whether they are sufficient to entitle a Jury upon their oaths to say, that such must have been the purpose and state of mind from which the acts proceeded,—acts, you will observe, in their own nature, unavoidably equivocal, and as to the true character of which no two men of opposite parties would form the same opinion.

You must be already aware then, Gentlemen, of the extreme caution with which a Jury is bound to proceed in considering a case of this complex kind. It can never be pretended, in the broad words of the definition of my learned friend, that, to express dissatisfaction with the proceedings of Government, or opinions against the existing laws, or laws intended to be brought into existence, can be arraigned as improper and seditious acts. On the contrary, it is from such acts that all the great improvements in our institutions have originated, and to such proceedings are we indebted for all our distinguished advantages as a free, a powerful, and enlightened people. Not only then is it the privilege, but it is the duty of those who think that measures may be taken for bettering the situation of the country at large, to state their sentiments, and, if necessary, to complain aloud of the existing evils and imperfections. It may often be highly proper, and absolutely necessary, to point out the disadvantages attending present institutions, and to employ every form and mode of eloquence in order to recommend the adoption of those measures and principles, which may lead to regulations and laws that are better and more efficient. Petitions for abolition of the Slave Trade,—for

Peace,—for the abolition of the Income Tax, were opposed by those in the actual administration of the Government: But it was never, I believe, imagined, that these petitions had the most distant approximation to the shameful crime of sedition. But see where we are at this first step. Can it be doubted that the agitation of all these questions was offensive to Government? Can it be doubted that petitions setting forth the evils of the Slave Trade were opposed by the Government, —that trade which spread and encouraged ignorance, vice, and misery in Africa,—and which debased, and would have perpetuated the degradation of the human character in the west,— Can it be doubted that the complaints made in petitions for Peace, charging Government with unprincipled conduct in carrying on the war,—a war of advantage to a few individuals, but unnecessary and ruinous to the country, and attended with an enormous and prodigal expenditure of human blood, and of the means of national prosperity,—can it be doubted that such complaints were disagreeable to the Ministers?—Can it be doubted that petitions against the hateful and inquisitorial but productive tax on income were opposed by them?— Can it be doubted that the proceedings at public meetings respecting these objects tended to excite violent indignation among the people against existing laws and establishments; and, with regard to a great number of the measures alluded to, excited the indignation of the people against those who are entitled to be called and are known to be our rulers? Many of those measures of public policy which I have stated, were very warmly defended by the Government; and it may be very truly said, that, in loading such measures with the opprobrious epithets which all men now agree they deserve, we were throwing an odium on our rulers.

But, says the Public Prosecutor, our rulers are the King, Lords and Commons; and all attempt to excite hatred against them, is clearly within the narrowest definition of the crime of sedition. To this, however, I reply, that our rulers are his Majesty's Ministers for the time being, and those, and those only, who concur in their measures. It is only through these Ministers, and by their advice and influence, that the Sovereign is understood to act, according to the principles of our Constitution. The Ministers are the King; and it is not lawful to impute any bad act to him personally, his acts being the acts of the Ministers. And who are the Lords and Commons? The majority alone of them having been in fact our rulers, the minority have nothing to do with it.—If, therefore, it has been the pride and boast of Great Britain, eminently distinguished for the sense, the virtue, the morality,

the science which it contains, that, by the right of discussing politics and petitioning the Legislature, oppression has been shut out, corruption exposed and circumscribed, and, in despite of their rulers, the people enlightened and enabled to judge of public men and public measures;—if it is on account of this invaluable right that we joy and pride ourselves among the nations;—where is the propriety of rashly interfering with the exercise of this right, and why object to the speech of a petitioner, because some things in it may fall under the general terms of the definitions which lawyers have given of the crime of sedition? Perhaps no better definition of sedition could be given; but here *the intention* was not to excite tumult or disorder, and therefore no sedition was committed. The petitioners did not approve of the measures of our rulers,—they believed a reform in the representation would be beneficial, and they stated their sentiments on these subjects to the King, Lords, and Commons.

But, my learned friend said, the conduct of the pannels was calculated to excite dissention. In one sense I admit that it was: But I have no such horror at dissention as the learned Lord. There is a dissention known to this country, and known to all free countries, and to them only, which, however terrible it may appear to the sons of habitual slavery, or the minions of arbitrary power, or the contented and envied possessors of present influence, is of that wholesome nature that on it the life and health of the Constitution ultimately depend. It is not a frightful commotion, but a healthful exercise;—not an exhausting fever, but a natural movement, proceeding from the vigour of the Constitution, and at once indicating and maintaining that vigour unimpaired. Wherever men are entitled to rise to high stations, whatever their birth and condition may have been, *there* great dissention will inevitably be found. In that fierce, but generous struggle, there will necessarily be great heats, and appearances of violence and intemperance. There will be some real excesses also, and a great deal of dirt will be scattered about in the competition,—which is all the injury that the main body of the people will experience. In a free country where the principles of government are well understood, and the laws well administered, parties will ever be found opposed to parties, all of them calumniating and abusing one another,—taking advantage of the slips of their adversaries, and fastening on them the keen and eager eye of hostile animosity,—contending with the most strenuous emulation for those places and offices attended with power and patronage, which are then only respectable and ho-

nourable when filled by persons distinguished for those talents, and that industry and merit, which can neither be generated, nor made manifest on any other scene. This dissention, though the parties engaged in it are somewhat reviling and reviled, is the life, and heart, and spirit of our Constitution; and true policy should promote discussion on those great points, on which discussion must always be keen, and in some degree stormy and violent, because it is on them that the liberty, the prosperity and happiness of the nation depend, and to them that all men of spirit, ingenuity and talents have devoted their whole lives, from their birth to their last moments. The lives, accordingly, of almost all the great men who have adorned the history of this country, have been a continued scene of warfare; and, except in a few instances of individuals endowed with more than usual placidity of temper, our most eminent statesmen may be said to have passed their lives in traducing the conduct and measures of their opponents, glossing over the faults of their partisans, and employing the strongest language in denouncing what appeared to them contrary to the spirit of the laws and the constitution. If this dissention were prevented, liberty would be extinguished. That very hostility which appears to excite so much apprehension, is the parent of public prosperity, and of all the advantages in a free state for which it is worth while to contend.

The right of exposing misconduct in the administration of the Government, and of applying in a constitutional form to the Legislature for redress of grievances, whether real or imaginary, is the result of this wholesome privilege of discussion. It might perhaps be maintained, that under the right of petitioning the Legislature for any object which the persons petitioning might sincerely think fair, reasonable and proper, language, however strong, if expressive of the sincerity and strength of conviction of the petitioners, should be permitted. The very publicity of the act of petitioning,—the ancient date of the right,—the constant and almost immemorial experience of its good effects,—and, above all, the appearance it has of reliance on the Legislature, protect almost every thing that may be done under this invaluable privilege. But I am far from exposing my case to the hazard of maintaining, that in the exercise of this great public right excesses may not be committed, of which men ought to be ashamed, and which the law is called on to avenge. Without meaning to detract from the powerful argument you heard from my learned friend Mr Clerk,—I say that, even when met for petitioning Parliament, excesses may be committed by speaking and writing for which the people are responsible to the law, and for which a Jury

may be reluctantly constrained to punish them. In such cases, their intention is to be gathered partly from the nature of the objects pursued, and partly from the language employed, and the means recommended for the accomplishment of their purposes. If a person should pretend, or even be mad enough seriously to propose, to petition Parliament for the abolition of the Christian religion,—for deposition of the King or dismissal of the House of Lords,—for division of property,—community of wives, or such objects,—(there can be no seriousness about such things, but suppose that such petitions were proposed),—the Public Prosecutor would be justified in interfering, and even the desperately ignorant could not be screened in the prosecution of such views. But supposing the object not so plainly extravagant, and obviously criminal, as any of those I have alluded to; still if the means held out for obtaining it are clearly criminal;—if, at the same time that a petition to Parliament is recommended for universal suffrage, or any thing else, the petitioners are exhorted to appear with pistols in their hands, and to use them to enforce their requests, or even to do any thing implying an offence against decency and good order, transportation or a more severe punishment might be justly inflicted on the transgressors.

The point then at issue is, What is the degree of criminality that demands, or whereabouts we are to look for the excess which authorises the intervention of the law? —When is it that the avenging voice of a Jury is required? —and has such a case occurred in the present instance? It is by no means enough that you individually regard the objects which it is proved those persons had in view with their petitions, as erroneous, improper, and absurd objects. That is not the question which is committed to you to try. You are to judge whether they were actuated by seditious intentions. The object of the petitioners, in this case, was Parliamentary Reform; and, as far as I can see, a change to a great extent in the representation of the people was contemplated. They wished for annual elections, and that all should have votes. You may think such a plan mischievous, and an attempt to recommend it productive of bad consequences. I rather think so myself. I think the introduction of annual elections would be a hazardous experiment. Universal suffrage is practically impossible; and if possible to be introduced, it would probably aggravate some of the evils it was intended to remedy. But ought such an opinion of mine, of yours, and of a great many others, to prevent persons holding different opinions from taking constitutional means for enforcing their opinions? Annual Par-

liaments are beyond all question agreeable to the ancient practice of this country. Whether there ever was a law with regard to them, I shall not here pretend to determine. In point of fact, for many centuries, there were scarcely any others; and, upon the whole, I have no doubt there have been more annual Parliaments held in Great Britain, than Parliaments of a longer duration. Those who admire our ancestors and remote times more than I do, (for I think, as to liberty, we are better off now than ever we were), may wish to have recourse to annual Parliaments, and this desire may be innocent and laudable.—Universal suffrage, again, is agreeable to the theory of the Constitution. There can be no doubt about that; and a greater approximation in practice to the theory of the Constitution than what at present exists might perhaps be desirable. In all the books on the English Constitution, the principle is to be found. But here, again, to be sure, the theory and practice are disjoined. There never was any thing like what is now meant by universal suffrage established in these lands: for if we look to history, we shall find that the great body of the people were formerly in a state of villainage under the Aristocracy. Universal suffrage, however, is agreeable to the theory of the Constitution. According to constitutional doctrine, every man has a representative in Parliament. I might read a great variety of passages from Montesquieu and others, from which it is quite clear that they regarded this principle, that the people have a right to be represented in Parliament, as the foundation of our liberties. Now, the fact is well known, that some places are not directly represented at all,—that some large towns choose no representatives, and that there are representatives, on the other hand, who have no constituents. Now, it appears that the petitioners thought this wrong, and desired to introduce a practice a little more analogous to the theory of the Constitution, which certainly was no great crime in them, whatever may be thought of the expediency of their views.

This brings me to some leading statements in the address of the Public Prosecutor. He says you may attack the Ministers, but not the Constitution. You must not deny that the King, Lords and Commons, are each of them, as now existing, the legal depositaries of the degree of power given to them; but you may attack the Ministers as much as you please. We are beholden to him, at all events, for the concession; but let us see what this distinction points at,—what it means. Does my friend mean that the people shall not petition against,—shall not complain of, any grievance which

consists in a bad arrangement of any great branch of the Legislature,—any class or order in the Constitution,—in perhaps a new grouping, or a mischievous alteration of any thing in the constitution of the legislative body? What! Is it not competent to petition against the septennial law? Was it not lawful to petition for its adoption? I think the ministry of that day would scarcely have treated such an application as seditious; yet it made just as great a change in the Constitution, as the adoption of annual parliaments would do now. Direct acts of Parliament make changes in such matters every day; but from what do they originate? Not surely from the arbitrary will of Government, but from the sentiments of the nation. I never heard such acts defended as being measures of Government, but as being conformable to wisdom, good sense, and propriety. The law establishing the inability of excisemen to vote at elections,—laws relative to residence of voters,—all these, and many other arrangements touching the constitution of the Legislature, have been made from time to time, and a great many have recently been made. Is it to be said that the people are to have no voice regarding such matters? that they may petition and interfere as to the imposition of taxes, but not as to the reformation or improvement of the body by which they are imposed? I entirely deny the existence of any such distinction. The right of petition unquestionably extends to every thing that is within the competence of the Legislature to grant. It is not within the power of the Legislature to abolish Christianity, or the House of Lords, or any of the branches of the Legislature. But, with regard to every measure which may constitutionally originate with Government, the people may humbly petition, pointing out such reasons as appear to them to recommend or to oppose its adoption. This is the people's right. To meet for this purpose is lawful, and there is no reason for restraining them in their deliberations on such occasions. Over the great legislative body they have thus had a continual, uniform, and a progressive control, from the first dawn of freedom in the country down to the present time.

In the exercise of this control, they are not circumscribed to any particular class of topics, but may expatiate freely through every branch of our laws and policy. There are a great many authorities which I need not read to shew, that propositions may on such occasions be maintained, the very mention of which has been erroneously supposed by the Prosecutor to infer blame. The pannels are alleged to have said they were entitled to break out into open rebellion if they did not obtain universal suffrage and annual parliaments. I have not

discovered that they said this. I hope they will not obtain either of these objects; but it is competent for persons who think differently from me with regard to them to ask for them, and to state their reasons for doing so. That they are entitled to be heard, I maintain loudly and unequivocally in opposition to all assertions to the contrary,—assertions which would go to subvert the foundation, and extinguish the vital principles of our Constitution.

But it is said that the words used here admit of no defence. It is your province, and yours only, to judge of the import of these words, and of the intentions of the persons who used them. I will not go over them all. One observation, however, it is quite indispensable to make, and that is, that you are not to form an opinion upon the import of the passages quoted in the Indictment, without listening to and pondering by yourselves all the other passages in the same paper. It has never been a rule in trying a case of sedition, that a single sentence is to be judged of by itself; and you are not entitled to proceed on that sentence as indicating the seditious character of the whole production, if, in point of fact, the great bulk and general character of the statement give the lie to the charge.

You are told that the expressions charged against the pannels are seditious and inflammatory. I believe that some of the expressions are extremely absurd, and exceedingly improper, nay grossly indecent. But I maintain, that looking at them either by themselves, or in context with the other passages in the publication, and considering the occasion of the meeting, and the intentions of the parties, as demonstrated by their whole conduct, and by the evidence which has been adduced, you cannot by possibility find in the pamphlet any thing to force you to say, by your verdict, that the author, publisher or seller must have acted with the intention of subverting the Constitution, or filling the kingdom with trouble and dissention. You will understand, then, that I do not wish to defend these expressions as free from blame; but I have again to warn you that you are not entitled to find a verdict against these men as guilty of sedition, merely because you may think, as I do, that they employed improper expressions, in prosecution of a lawful object by lawful means. If you could permit your own sentiments respecting the objects which the petitioners had in view, or your feelings of disapprobation of the language which they employed, to influence for a moment your opinion as to their legal guilt or innocence, the consequences to the law and the liberties of these kingdoms would indeed be tremendous. If such a principle of judgment

were to be admitted, different men before different juries might, under similar circumstances, meet with very different verdicts. Every man who strongly believes in the propriety of particular sentiments, will, in expressing his honest opinions, regard opposite sentiments as excessively wrong, and as having a most pernicious tendency. A sincere Tory thinks the principles of the Whigs tend to render the Crown not fit to be worn, and to put the country in imminent hazard of anarchy and confusion. On the other hand, there is no honest Whig who does not believe that the principles of the Tories, if left entirely to themselves, would annihilate the privileges of the people, and put the Government on a level with that of any common arbitrary monarchy. In the opposite speeches of these two great parties, they continually arraign one another as defending principles leading to such conclusions. I hope neither of them will ever have an opportunity of seeing put to the test, unchecked, the principles of their opponents. Perhaps you are neutral between these parties; and I am persuaded, that, at all events, you are possessed of liberal and fair toleration towards persons of a different way of thinking from you on political subjects; and that if their lives give the lie to any idea that they intend mischief, and if they are men generally looked upon as entertaining moderate views—though you think that the practical application of their doctrines would lead to evil consequences, you will give them credit for upright intentions. Fairness and liberality require that trust and confidence should not be withdrawn from others, merely because they entertain different opinions from our own upon these disputable matters, particularly when it is universally known that different opinions are really entertained as to the actual safety of their doctrines. Therefore, admitting that a great part of the statement in the speeches would be dangerous, if the authors could convert the great majority of the people to their way of thinking, (in which case I should think some of us were in a bad way), God forbid that any other weapons should be used against them, than those of argument and good sense;—God forbid we should think of binding reformers hand and foot, as the means of checking their erroneous doctrines.

Having made these few observations, I shall now more particularly examine the speeches which were made at the Dean Park meeting. And, first of all, I may remark, that the meaning of the passage in which the petitioners speak about the selfishness and aggrandizement of our rulers is sufficiently obvious. The Ministers for the time are quite plainly meant;

for what kind of aggrandizement could the King or the Prince Regent look for? The term must mean persons who have something in view before them; and not those who have already attained the heights of sublunary grandeur. Upon this I am sure it is unnecessary to waste another word.

The next is the famous passage about hell and allegiance: and I shall not diminish the force of Mr Clerk's remarks on this subject, by offering many of my own.—But what is the gloss now put on all this? The Public Prosecutor here sees tremendous sedition, and reads the meaning thus:—"If you, the Prince Regent, will not become a reformer, we shall take up our weavers' beams, and force you."—Now, do the words necessarily bear such an interpretation? I say they do not. I say, not only that they do not bear it necessarily, but that they do not bear it at all, and that the plain meaning of them is quite different. I say that the passage is to this effect: "We, the Weavers of Kilmarnock, want universal suffrage, and annual parliaments. We shall lay our petition for these objects at the foot of the Throne, where sits our August Prince, whose gracious nature will incline his ear to listen to the cries of HIS PEOPLE, which he is bound to do by the laws of the country. But should he be so infatuated as to turn a deaf ear to THEIR just petition, he has forfeited THEIR allegiance." The important words are exactly as I have now cited them,—and their plain, and indeed their only meaning is, that if the Sovereign disregards the voice of *his whole people*, he has no right to their allegiance. It is not agreeable to allude to the miserable extremity of an actual difference between the Sovereign and his subjects; and no wise or moderate man could contemplate the possibility of such difference, but in the most extreme circumstances. But is there any thing in what I have read, which a court of law could pronounce to be seditious at all? Our duty obliges us, in defending the pannels, to take refuge under the argument of an implied contract between the Sovereign and the subjects, which may be broken, and of course may be *enforced* upon either side. Now, keeping this principle in view, let us attend to what the petitioners really say.—They say, We, the Weavers of Kilmarnock, want universal suffrage and annual parliaments, and will petition the Prince Regent on the subject, who is bound to listen to the cries of his people. What is the meaning of this? Do the "cries of his people" merely mean the cries of the weavers of Kilmarnock? Were these people really so blinded to reason, by hunger and their desperate situation, as to imagine that their voice alone could regulate any measure of public policy? Is there any

reasonable ground for alleging that they meant to say, We, the unemployed weavers of Kilmarnock, are disposed to have universal suffrage and annual parliaments; and if you, the Prince Regent, do not give us them, we will rebel against you though nobody else should join us? Is that the feasible sense of the passage? Could these persons, who seem to have had some smattering of reason about them, think that the Constitution must be altered, in order to please a few hungry men assembled in a cold day at Kilmarnock? No such thing. The person who uttered these words plainly meant *all* the people:—he meant, that if the Prince Regent refused *their* just petitions,—if he did not listen to the *general* cries of his people, then he had forfeited *their* allegiance, that is, the allegiance of the whole nation, so petitioning, and so repulsed and rejected. It would be too absurd to imagine, that if all the rest of the people in the kingdom were to be true to their allegiance, they, the Kilmarnock petitioners alone, were to rise into rebellion. The words do not bear such an interpretation. The whole people are spoken of.

I do not hesitate to say that the expression is indecorous, and that it is improper to raise up the idea of resistance on such an occasion. The terms employed were indecent, and perhaps punishable, as a breach of police; but they were not seditious. What was said was perhaps harsh and absurd, but it was consistent with the law of the land. For what is the proposition?—That we are entitled to present our petitions to our August Prince, and that he is bound to listen to them. I do not know whether the petitioners anticipated the general voice of the people to support their wishes; but in speaking of the Prince Regent, they only say, that his gracious nature will incline his ear to listen to the cries of his people. But, if the Prince Regent is bound by the laws of the country to listen to the cries of his people, *under what sanction is* he bound? There is no doubt, if the people were unanimous in petitioning for any object, Government could not be justified in refusing the petitions. The doctrine of the petitioners is consistent, therefore, with the law and constitution of the kingdom. In one sense, the Sovereign is but the chief servant of the people, though he is entitled to all respect, to all deference, and to all reverence. The law and the constitution have pronounced that Resistance is lawful to the people in certain circumstances; though undoubtedly a lamentable struggle might ensue, if such resistance should become necessary.

It is with the utmost pain and reluctance that I enter at all upon such a discussion,—having been accustomed to regard

this constitutional doctrine with reverence approaching to awe, and being convinced, that in common times it is a doctrine which should be but seldom the subject even of contemplation. But "Fools rush in where angels fear to tread."—And though some apology, perhaps, may be found for the folly of the petitioners in the extremity of their distress, I am far from denying that it is such as to disgust and offend all persons of good education. The doctrine of resistance belongs to the more sacred and private recesses of the Constitution, which are profaned by exposure to the eyes and to the handling of the vulgar. Yet our safety undoubtedly might come to rest on the principle of resistance; and though violence is done to all well-constituted minds, by any light or needless allusion to such a topic, yet when my clients are in danger of punishment, it is my duty to state that proposition in their defence, and I am sure their Lordships will agree in the fitness and propriety of my doing so.—I might cite to you upon this occasion all the authorities that exist upon subjects of this description, and confirm the proposition I have announced by passages from Locke, Hume, Blackstone and Burke, and every writer, indeed, who, in a spirit of unquestioned loyalty, has at all entered into the philosophy of our freedom. But omitting those more general and notorious authorities, I shall content myself with citing to you that of one, not inferior in point of talents to any I have mentioned, and on whom also death has lately set his seal. The person to whom I allude, delivered his sentiments in a scene and situation in which it was his duty to abstain from making such a statement, if his own judgment and good sense had not assured him he was justified in what he said. I allude to a speech in the printed trial of Fyshe Palmer, delivered by Lord Meadowbank, who was then at the Bar, and acted as Counsel for the Crown on that occasion. In commenting on the conduct of the pannel, that eminent person took occasion to say, "The only plea that can be set up is the plea of the sword —none else. The time may come—and then I hope there will be spirit and virtue in the country to assert its rights—the country lately shewed its power to assert its right, not against the executive power, not against the representatives of the people, but against those who were organizing a different representation, a series of little Parliaments, those self-constituted societies forming a convention from these. Then there was reason for alarm to the good citizens of the country, and the good citizens came forward, and signified their resolution to abide by the Constitution with their lives and fortunes, and to share its fate: and, I hope, if our religion, or

our civil liberty, is again attacked; if a king or a mob shall dare to persecute us for our freedom, that there will be spirit in this country to assert its right, and maintain our Constitution. Kings are but men, and we ought to be thankful for such a king as we have; but if a king were to come who was to send the bishops to the Tower, because they refused to read a prayer or a liturgy disowning the Godhead of Christ, —were the time to come, when men should be punished for refusing to pay taxes,—were the time to come, when men were to be tried without form of law, without judges, or juries, but by the arbitrary power of the Crown, by their minions and delegates,—then would be the time for every man of spirit in the country to assert their rights." I read that passage to you, in order to point out from recent and domestic authority, how clearly the doctrine of resistance is recognised among all who have studied our Constitution, and how boldly it is held forth, even by the official advisers of the Crown, as the ultimate resource which the Constitution affords when an extreme case shall arrive. Now, no more extreme case can be supposed, than that of the Prince setting himself in opposition to the voice of his whole people, and that is the only sense which can be put on the passage here in question. Resistance is a lamentable and a dreadful remedy; but it may be a necessary one: and though we ought to take it for granted that the necessity will never occur, we cannot allow its existence or its efficacy to be questioned. It is a true, but awful maxim, and not fit to be canvassed irreverently in conversation, public speeches, or publications. But in defence of my client, I say that it is a true maxim, and that there is neither treason nor sedition in stating it, as is done in this pamphlet.

I shall not fatigue you by going over all the passages which are cited in the Indictment, but shall only trouble you with one or two, in order to settle the sense and construction, and determine what was truly and really the scope of the whole discussion on this occasion. You were told that the question lies here, (and I agree that it does), Whether, upon the whole, under a pretence of petitioning, it appears there was a purpose in the minds of these people not to obtain redress, but to excite sedition, tumult and confusion from one end of the kingdom to the other. That is the question truly and substantially; and you are not to dwell on detached passages, without taking into view all others of a less ambiguous description:—you are to judge of the import of the whole.

One of the citations in the Indictment is, "That the House of Commons is not really what it is called; it is not a House

of Commons. At present we have no representatives." Now this seems to me just such a way of stating the thing, as when a person says, This is no house—this is no dinner—this is no speech, meaning it is not what it ought to be. The mode of expressing the opinion is somewhat strong, but that is its meaning. It is said in the pamphlet, "And a House of Commons, but the latter is corrupted; it is decayed and worn out; it is not really what it is called; it is not a House of Commons." It is then explained, "The House of Commons in its original composition consisted only of Commons chosen annually by the universal suffrage of the people." *There* is the difference between what it is and what the person speaking conceives it ought to be. When we wish to say a thing is not what it ought to be, we sometimes express our meaning by saying it is not at all; and when a person means to say that the representation of the people is not what it ought to be, he may naturally enough express his meaning by saying that there is no representation at all. The statement of this very opinion has often been given in this way, and has never been challenged. But it is not on my authority that I wish you to take this explanation. It is given in express terms in the subsequent parts of the very speech from which the expression is quoted.—The orator, after some farther dissertation, goes on to say, "Will any man, then, possessed of common sense, say that this is a House of Commons *agreeable to our Constitution*, or that it is A FAIR representation of the people?" All this, you will observe, is in the same speech, and it must, by every rule of construction, be taken along with what went before to explain and modify those more general expressions. —The same explanation occurs in five other passages of the pamphlet—and leave no room whatever to doubt, that what the orators meant was merely that the House of Commons was not what they wanted, and was not *a fair and equal* representation of the people. Is it sedition to say so? I for one think the present representation a very beneficial one; and though it might be made more agreeable to theory, I should not expect great benefit from some of the changes which have been proposed. But can it be called a fair and equal representation of the people in any sense of the word? There is hardly any person in Kilmarnock who possesses a vote.—I do not say there is any disadvantage attending the present representation, but other persons may think differently; and sure I am there are plausible grounds for any one saying, he would like to see the representation reduced nearer to the theory of the Constitution. Upon system and principle the representation ought to be altered in some particulars;

though, upon the whole, I do not expect the mighty effects from any alteration which some people do. The passage in question is a short, rhetorical, pithy, forcible way of expressing the speaker's opinion; but he obviously means that the representation is unequal, that it is not sufficient, and not agreeable to the theory of the Constitution. That a man should be prosecuted for sedition for appealing upon such a point to the authority of Parliament was never heard of before. But it has been the fate of the pannels to be accused of arraigning the Constitution, while contending, as they thought, for its restoration to purity and vigour.

I now turn to the definition of sedition in our law books. To commit sedition, you must, in direct terms, or by unequivocal insinuations, excite discontent and disturbance against the present state and constituted authorities of the country. Mr Hume, who is not supposed to have looked upon sedition with any extraordinary lenity, expresses himself thus: "It reaches all those practices, whether by deed, word or writing, or of whatsoever kind, which are suited and intended to disturb the tranquillity of the State;—for the purpose of producing public trouble or commotion, and moving his Majesty's subjects to the dislike, resistance or subversion of the established Government and laws, or settled frame and order of things."

Then see by what instances and examples he illustrates and explains his definition.—In every one, you will observe, he makes it an indispensable qualification that there should be some direct exhortation to the people to usurp an illegal power.

Mr Hume is looked upon as a great advocate for the Crown in his observations on sedition. The times in which he wrote his account of the law on this subject are supposed to have given a bias to his opinions, of which he was probably insensible. There is a prevailing opinion at least to this effect, in the other end of the island especially,—unfounded in all probability, but certainly very generally diffused. This, I say, is a common opinion concerning his treatise; and certainly his argument against sedition is carried as far as it can go. His book was published recently after the circumstances of the country required a more than usually vigorous application of the sedition laws; and this accident may have warped his opinion on the subject. Yet, strictly and rigorously as it may be thought he lays down the law, it will be found that even his grasping and comprehensive description does not include the case of the pannels, but that every one of his examples implies that there has been a direct excitement of the peo-

ple to take to themselves some part of that power which belongs to other hands. But in the present case there are no words which shew an idea to have been entertained of usurping such a power. I say none of the passages can be founded upon as indicating such a purpose. There are words indeed which expressly contradict the idea of any such purpose. In the speech of Mr Johnstone, page 14. of the pamphlet, he says, after enumerating our grievances in glowing terms, "But what are we *to do*, my friends; what does the Constitution authorise us *to do?*" Now this is coming to the point with sufficient directness; but let us see how it is settled. The orator answers himself thus, "It gives *us a right to lay complaints before the King and both Houses of Parliament*, and a right to be heard and relieved when we suffer. Let us this day embrace the privileges of our glorious Constitution; *let us lay our petitions before them*, and assert our rights as men and as Britons." Is there any thing equivalent to sedition here?

I might put the matter also to the test of what the petitioners did. Did they organise any societies to correspond with? Did they affiliate themselves as the United Irishmen did? Did they declare their committees permanent, or provide in any way for their future proceedings? In short, what did they do? They did just what they professed to do,—they petitioned Parliament, and having sent off their petitions, went home quietly to their families. No meeting has ever been heard of at Kilmarnock since the evacuation was made in Dean Park; and if that is the way in which the people are to alleviate their distresses, it is at least as innocent as running up scores at the gin shop. But we must go back to our orator. He proceeds, "Let us therefore use every constitutional means to recover our lost rights, rights which our ancestors enjoyed and exercised; let us be firm and unanimous in our resolves, that we will not be deprived of our privileges any longer, that we claim them as our birthright, and *by our quiet and constitutional conduct* shew our enemies *that we hate anarchy, confusion and usurpation*, and that we want nothing but what is for the general good of the country." But these, it has been said, are pretences, put on to disguise the real wickedness of their designs. I think you are in no danger, Gentlemen, of believing that. Whatever faults these people may have committed, I am confident you will not find them guilty of hypocrisy. My own conviction is, that they have spoken more violently than they intended; but I am sure you will give them credit at least for all the moderation they profess.

There is a great deal more to be said on the other parts of this publication. Mr. Craig makes an eloquent harangue. There is a great deal of poetry in his speech. "Being then, my brethren, impelled by necessity, let us approach, displaying reason and resolutions like men who know their duty and their object. Yea, with these and similar principles may we undauntedly go forward, and like legitimate sons come to the years of majority, let us in the name of law and justice demand the inestimable and dearly purchased bequest of our worthy progenitors, that we may enjoy it ourselves, and transmit it to a lauding posterity. And so act, awaiting the fiat of Him who regardeth not the persons of men, but attendeth to the cries of the poor, and pleadeth the cause of the distressed; always taking for our encouragement *the success of the importunate Widow* recorded for our instruction, *who by her incessant demands* prevailed with the unjust judge, that although, without any regard to his high obligations, yet was not totally destitute of that principle which makes all human kind quake, when reminded of neglected duty. May we be actuated by the same courage to go and do likewise." Here, again, you see how distinctly their views were limited to the peaceful iteration of petitions.

The purpose of the Resolutions, too, has been entirely misunderstood. In the 5th it is said, "That the Debt, now amounting to nearly 1000 millions, has been contracted in the prosecution of unjust and unnecessary wars, by a corrupt administration, uniformly supported by a House of Commons, which cannot be said, with any justice, to be *a fair and equal representation* of the country, but which for the most part is composed of men put in by a borough faction, who have usurped the rights of the people; and who by undue means have contrived to return a majority of members of that House." The facts here stated are trite and stale, but the passage is worth noting, as affording, and that in the most authoritative and *only deliberate* part of the publication, the most clear and complete evidence of what they meant when they used expressions vituperative of the present House of Commons.

The 9th Resolution is, "Being therefore impressed with the truth of these Resolutions, the meeting resolve to present petitions to his Royal Highness the Prince Regent, and to both Houses of Parliament, requesting his Royal Highness in particular to *assemble Parliament* without delay; to call upon it immediately to adopt such measures as may tend to restore to the people their undoubted right in the Representation,—to order, in the name of the people, an immediate reduction of the taxes and the standing army, the abolition of

all unmerited pensions, sinecures, grants, and other emoluments; as the surest way of establishing on a firm and lasting basis the rights of the Crown, and the privileges of the people; and that in all time coming, "no person who has an office, or place of profit under the King, or receives a pension from the Crown, shall be capable of serving as a Member of the House of Commons. 12. Wm. III. c. 2." It is quite plain from the context, that it is *the whole Parliament*, and not the Prince, that is called upon to order an immediate reduction of the taxes, the standing army, and so forth;—so that the eloquent exposition of the Lord Advocate upon this passage was founded upon a manifest misconception of its meaning.

I have only to call your attention to the next Resolution, which clearly shews the scope and extent of their views and threatenings, "And the meeting hereby resolve to make known to his Royal Highness the Prince Regent, and to both Houses of Parliament, that *they will not cease sending up one petition after another, and using every constitutional measure* insured to them by the laws of the country, till they obtain the restoration of their rights and privileges, as men and as citizens of the State." This is the only *practical* resolution they came to; and even this was not acted upon, for it appears that no other meetings have been held, or petitions transmitted from that time to this. In the same way the meaning of the words, "Shall we bear this," or similar terms, is throughout explained in the clearest and most precise way to be, Shall we bear our sufferings without complaint, without murmuring, without stating our grievances by application to the proper quarter? "So far from ceasing to complain, they say the clamour of our cries for redress shall never cease to ring in their ears till the abhorrent temple of corruption be annihilated, and the banners of freedom wave from the heights of Dover to the mountains of the north." That is a lofty passage, and full of eloquence certainly. But in every one of the speeches, in which it is anxiously stated, not only that there are grievances, but grievances which could not be borne, what do they propose to do? Do they propose to attack the throne? No; they merely say, We shall apply like the importunate widow, and reiterate our clamour till we weary you, or by the force of our reasoning prevail over your prejudices.

There was one part of my learned friend the Lord Advocate's speech, of which I am really unwilling to say exactly what I think, or express the feelings it excited. I mean the passage regarding the Army, when he spoke as if there had been a disposition entertained by some of those at the meeting to induce the

army to rebel against the Government. The only libel I have heard to-day is the supposing, for a moment, that such an intention could be entertained, and with any the slightest hope of success. The policy of keeping up a standing army was long the subject of discussion in Parliament, and the danger of it to the Constitution was much insisted on, while, latterly, such a danger has been less apprehended, and the great consideration in questions regarding the army has been the expense which it necessarily imposes on the country. But whatever opinion may be entertained on this subject, there was no discussion at this meeting on the expediency of a standing army; and the passage in question is most manifestly intended merely to meet this common and almost obsolete Whig topic, and to shew that it was not from that quarter that danger was to be apprehended. I say that this was obviously its meaning, if indeed it is not rather to be regarded as a piece of mere declamation upon a very popular and inviting theme. Nobody at present thinks ill of the army; on the contrary, it is scarcely possible to speak on any public subject without taking an opportunity of saying something in the praise of the army; and to endeavour at a piece of eloquence in its favour is the ordinary style of writers of all descriptions. The hope of seducing it from its duty and allegiance, if it were not too wicked, is far too absurd to be entertained even by the most desperate conspirators.

In another speech it is said, "It is high time, when they have robbed us of our money, deprived us of our friends, violated our rights, and abused our privileges,"—it is high time for what? to take up arms and overthrow the Government? no such matter—only "*To demand redress for such treatment.*" The orator then goes on, "But, methinks, I hear them say, we are determined to give no redress, we have huddled ourselves into places, pensions and sinecures, and we are determined to hold them. This I think is their language. Well, well, what then?" In this desperate case, proceeds this seditious orator, "We must seek redress from another quarter; *we must petition his Royal Highness the Prince Regent* to remove our grievances! to give us a Parliament of our annual choosing, which will represent us in a form agreeable to our wishes, and agreeable to the Constitution." Is it said that this is hardly a cover for professed rebellion? In answer, here is another passage, "The unanimity of our sentiments and exertions, *agreeable to the Constitution*, will once more dispel the cloud which eclipses the resplendent and animating rays of liberty, and will again make her shine forth in this once happy country with unimpeded effulgence." The last speech in

the pamphlet ends thus: "Permit me now to conclude in the inimitable language of our celebrated Bard, and friend of liberty, Robert Burns—May tyranny in the ruler, *and licentiousness in the people*, find in each of us here an inexorable foe."

There is another passage where allusion is made to reverend hirelings, upon which the Lord Advocate bestowed his eloquence as needlessly, and, I am sure, with as little effect as on the passage about the army. In that quarter of the country, a tendency to fanaticism rather than to irreligion might be expected; as it was there that Presbyterianism first struck root; and in this very pamphlet you will find passages similar to those employed by the Covenanters in the Tales of my Landlord. "It is there you will see how Egypt flourished under the wise administration of Joseph;—and what the hard-hearted and inquisitorial Pharaoh did for the sons of the Nile;—it is there you will see what Solomon did for Israel;—with what Jeroboam, Nebat's wicked son, and others, brought upon the (now) wandering sons of Jacob. It is there you will see what Nebuchadnezzar, Evil-Merodach, and Belshazar, did for the now extinct Babylonians;—how Persia rose under Cyrus, and sunk under the bloody Cambyses," &c. &c. I am confident, indeed, that you cannot look into any part of the publication without seeing great reverence for scripture,—a calm, temperate reliance on the assistance of Providence in all good acts,—a reliance to be founded on good moral conduct and prayer. The term, "reverend hirelings," employed by these rude orators, might be considered perhaps as not undeserved by certain clergymen who leave their proper duty for making proselytes in politics; and persons who do not agree with them might say, with any purpose but an intention to bring discredit on religion, that they had been hirelings in certain parts of their conduct. Nothing is more innocent. The attack might perhaps have been made in a more decorous manner, but surely there is no pretence for saying here, that there is any design to excite a spirit of irreligion.

I have now gone through the publication; and I leave it to you to determine on its nature,—only reminding you that it is a fundamental rule of law, that a seditious intention is necessary to constitute sedition. You will therefore consider, whether the object of these people was merely to petition Parliament, or whether, under the false and assumed pretext of petitioning, their object was to excite sedition among the people, and to spread mischief and disturbance in the country. In judging of this, you will remember what you

heard in evidence as to Mr Baird, of whom you were told that he would be the last man to join in any treasonable or seditious enterprises, and that he was accustomed at all times to check the folly and infatuation of his neighbours.

Gentlemen, I have already detained you, I am afraid, unreasonably long, but I cannot leave the subject without taking some notice of the precedents respecting trials and convictions for sedition which have taken place in this Court. They are all of very recent date, having occurred within the memory of most of us; I believe there was no trial for sedition earlier than the year 1792. There are, indeed, some ancient cases thinly scattered in the records of the Court, but in all these the crime was accompanied with other offences, by which the sedition was aggravated. There is no case of mere sedition earlier than the date I have mentioned. That date, Gentlemen, must strike you at once as affecting the character of all those precedents. For it is never to be forgotten, that they, one and all, took place at a time, when the minds of Juries, and of Courts, and indeed of all persons in the country, were in a state of unprecedented alarm for the safety of the Constitution;—at a time when acts and expressions, which undoubtedly would not have been taken cognisance of in happier and more serene seasons, were considered as of the most dangerous tendency;—at a time when this country had recently engaged in an alarming war with a powerful enemy,—a war, not arising from disputes about territory or points of national honour, but which, proceeding from enthusiasm and madness on the one hand, and undefined fear and resentment on the other, arrayed every individual in both countries in personal hostility against every other;—a war, indeed, proclaimed against all established governments, by a country whose whole interior exhibited a phasis of confusion and crime, and breathed forth a pestilential air, which threatened to spread the contamination through all the neighbouring regions. We fought not, as in former wars, with men formidable only by their numbers, their skill, or their courage, but with men whom we imagined to be armed with a deadly poison, and zealous to spread contagion wherever they went. In these times, not only was there a raging war with that nation, which was loudly threatening an invasion of our shores,—but it is impossible to deny that there was an established centre of rebellion at home, looking up to France as the great redresser of wrongs, asking its assistance to rear up every where the cottage on the ruins of the palace, and to carry into execution the most visionary and absurd plans for the regeneration of society. Communications of a most dangerous nature were

passing between the two countries, and the crisis seemed as imminent as any the world ever saw. Such was the distressing condition of this country, that it was impossible to remit for an instant the most watchful police over the conduct of the disaffected. And what was actually their conduct in that season of general alarm? Why, they were found in innumerable multitudes holding meetings throughout the whole land,—not going out one day under a feeling of distress to petition the Legislature,—but forming themselves into permanent and affiliated societies,—corresponding with one another throughout the whole kingdom, and with societies abroad, and smitten to such a degree with an ambition to imitate every thing in France, as to adopt French names and forms in their associations. In short, an organised system of disaffection was formed, calculated to strengthen the hands of the enemy, and to unite all the domestic desperadoes that could be mustered against our own established Government. Such was the condition of the country when the trials for sedition were first brought on. In the course of ten months, societies had been established, not only in every considerable town in Great Britain, but in every little village, which, as branches of the general society, appointed delegates to it. I think I am not exaggerating the condition of the country at that time, with a view to suggest, nor do I give this as an apology for some of the proceedings which then took place; but I state it as it really was, that you may know the true character of those proceedings.

The first trial was that of Mr Muir. Gentlemen, it is with pain I recollect that case. With all due respect to the Court and the Jury that tried it, I cannot think it a precedent to be commended. I cannot but consider it as an occurrence to be lamented,—since unfortunately it cannot be forgotten. Yet, in that case, Gentlemen, there were many circumstances of aggravation, of which there is no shadow to be found here. Mr Muir was a member of the society of the Friends of the People in Kirkintilloch and in Glasgow. He had gone to France, where he remained till after the war was declared. He came back to Ireland, and assisted at several meetings of the United Irishmen, and then returned to this country, when he was arrested and brought to trial. The charges against him were relevant. He was accused of having excited the people to disaffection to the King and the established Government: he was accused of having industriously circulated the work entitled the Rights of Man, and other publications of a pernicious and seditious description. I am old enough to have attended the trial; I was not then at the bar, but I perfectly re-

member the leadin features of the case. I think the evidence was scanty; but still the charge was relevant; and if the proof had been satisfactory he was guilty of sedition, and therefore liable to punishment. At that time there was a combination which seemed pregnant with danger to all existing establishments,—a combination formed by societies all over the country, who appointed deputies to a general meeting. The circulation of such works as Paine's Rights of Man was at that period likely to produce much evil. I believe, however, that feelings of compassion for Mr Muir were general. I hope they are perfectly consistent with utter detestation of sedition. I believe sentiments of regret for the necessity which led to his prosecution and conviction were universal; and I say, with all due submission to the law and the verdict of the Jury, that very many loyal subjects thought there was room for a verdict of acquittal,—that the bulk of the nation regarded the sentence as unnecessarily severe.

The next case was that of Fyshe Palmer. He was also connected with the Friends of Freedom, and had circulated a political hand-bill in Dundee and in Edinburgh addressed to the lowest people. Hundreds and hundreds of these, addressed to all and sundry, had been by him committed to the winds of heaven; and surely to sow such doctrines broadcast in this reckless way, without pretence of any special end, was criminal and punishable. The hand-bill contained much inflammatory matter, and was proved to have been circulated by him. It was addressed to all and sundry, and at a time when the minds of the people were in a dangerous state of irritation. No direct remedy was proposed for any of the evils complained of, and the only object in view seemed to be a dangerous usurpation of power. I say there was real sedition in that case, and that it had no resemblance to the present, where there was merely one meeting, and one set of speeches, for the special object of preparing a petition to Parliament,—with the preparation of which the whole business actually closed.

The next and the only other cases were those of the members of the British Convention, Skirving, Margarot, Gerald, and others; and certainly the existence of that extraordinary association gave a peculiar character to the whole of these cases. That formidable body, you may remember, was composed of a set of persons acting as delegates from the remotest parts of Great Britain, and who had no lawful business in this place, and no other visible purpose than to excite disaffection,—who had no such thing in view as petitioning the Legislature, but who wished to organise a power independent of it, unknown to the Constitution, and incompatible

with the existence of its great institutions. They had private meetings, and committees of emergency, some of which were only to act in the event of an invasion by a hostile force. Even taking the statement which was made by those persons in their own defence, and looking to the situation of the times abroad and at home, it is impossible to doubt that it was necessary to put down the Convention, and to inflict punishment on such as Skirving. I need go no farther into details, but shall merely mention that there was real, actual, and palpable sedition in that case. My purpose, in alluding to them, is to contrast them with the present case; for even in those times, and under all the deplorable circumstances which I have mentioned, this case would have been viewed very differently from the cases then tried.

The trial of Robertson and Berry took place at a time far more critical than the present. They were tried for printing and publishing a book entitled The Political Progress of Scotland, which, as to hurtful tendency, went far beyond the pamphlet now in question. Such and such taxes were said to have been illegally imposed, and the Constitution held out as a mere conspiracy of the rich against the poor; yet the punishment inflicted was three months' imprisonment to one of them, and six months to the other. There were worse cases in 1798. In one, I mean that of Morton and Anderson, it was proved that persons who were members of the society of the Friends of the People had gone into the Castle,—insisted that several of the soldiers should join the society,—and given as a toast George the Third and Last, and Damnation to all Crowned Heads; yet, upon a clear verdict of conviction, nine months' imprisonment only was inflicted. Two cases occurred in 1802. In one of them, under very gross circumstances, for the man was a soldier, and had said he was sorry the king was not shot, and that he could see his heart's blood on his bayonet, the punishment inflicted was one month's imprisonment, and banishment from Scotland for two years. The other was the case of one Jeffrey, (I am sorry that should have been the name), who, for wishing destruction to King, Queen, and Royal Family, suffered three months' imprisonment.

I have quoted these cases to shew, that even in times when great rigour was necessary, cases much worse than the present were leniently viewed; and I say, considering that we stand now in very different times, and that the people at Kilmarnock had confessedly no intention of holding conventions composed of delegates from various quarters, or of propagating sedition in any way, but were hungry artisans, who only met on

one occasion to petition for something they knew not what which they thought would afford them relief, and never harboured any purpose of exciting or rising in rebellion, but continued to prosecute their views by constitutional means; can you conceive, that if the more serious cases which I have been considering received such slight notice, the present case would, even then, have been thought worthy of any punishment at all, or that any thing further should now be done, than sending the pannels home a little admonished, and heartily frightened, to be more cautious on any future occasion?

In urging this to you, I think I may refer to an authority which cannot be either despised or avoided,—I mean the authority of the whole kingdom, of the whole law, of the whole majesty and power of the King, Ministers, Judges, and Legislature of England,—of that country which has had the longest experience of freedom, and has learned most thoroughly by that happy experience how little real danger there is in the discontents, or even the occasional violence of a free people. There, it would appear, they are not so easily alarmed,—not so easily frightened at words, or so apt to suppose that the Constitution can be brought into hazard by a few intemperate expressions. I quote, therefore, the example of England as it stands at this present moment. Will any one say, that what passed at Kilmarnock will bear any comparison, in point of indecency and indecorum, to what is notoriously passing in England every hour, and under the immediate observation of the Judges and of Parliament. The orations of Hunt,—the publications of Cobbett and others,—the meetings in Spafields and Palace Yard, are all, up to this hour, unchecked and unpunished,—and are met only by ridicule and precaution. In the Royal Exchange, at the doors of the Houses of Parliament, at the gates of the Palace, publications are openly sold,—not 400 copies of dull speeches, but hundreds of thousands of daily and weekly effusions, containing, every one of them, matter far worse than what is found in this publication. I am sure no one can look into them, without being satisfied that they contain strong excitements to discontent, and that their authors are continually working upon the feelings of the country; yet they are still holding forth their doctrines without danger of interference.

See, then, what is the course, that all the wisdom in council, and policy of Government, in that land of freedom have held? What is the course they have pursued with regard to that portion of the people with whom originated any disorder that exists in the country, and the people to whom indeed the disorders are still confined? Notwithstanding the situation of England

for the last six months, this is *the first* and the only trial which the present disturbed state of the country has produced. Really, Gentlemen, I should not have expected to find the first trial in this country. They that are whole need not a physician. There has been breaking of frames in many counties in England for eighteen months; and yet his Majesty's Government have a merciful reluctance, and are slow to call the people to account even for those great excesses, while there is any reason to think that they have been produced chiefly by their misery. And with regard to the political commotions in the metropolis, they know that a check to the spirit of freedom ought not to be given without necessity;—that the present tumults have not arisen so much from wickedness of heart, as from the pressure of misery;—and with a paternal solicitude, they look watchfully and compassionately upon the people, as if they were in the delirium of a fever;—and they spare them as deluded and mistaken only for a season. That is the tone and temper in which the equal justice of England is dealt, and sure I am it is admirable, when compared with that which would lay every newspaper open to prosecution, and stifle the voice of freedom. Nothing but extreme necessity and immediate danger can justify the rearing up State prosecutions. According to the example of England, we should be slow to punish the people. In England, much more has taken place to justify prosecutions than has yet occurred in Scotland. Looking at home, where no riots, and no rebellion exist, and where a great mass of misery has been more quietly and more soberly borne than in the sister kingdom, we should not be rash or hasty to stretch out the hand of vengeance against those whose case calls rather for compassion than punishment. Believe me, Gentlemen, it will be no honour, and no glory to us, to set the example of severity on such an occasion; nor will it redound in any way to the credit of our law or our juries, that we were more sharp-sighted and jealous than our neighbours in weighing the rash words of our fellow-citizens, at a time when they were suffering the extremity of distress. At such a season, expressions will be used which it is impossible to justify; and offences will be committed, which will again disappear in seasons of prosperity. A vigilant police, in such a case, is all that is wanted. Absurd and improper expressions at meetings for petitioning Parliament hardly deserve notice; and a facility of obtaining convictions for Government on trials for such offences is universally recognised as a mark of public servility and degradation. It is always most easy for the worst governments to obtain such convictions,—and from the basest people.

Affection to the Constitution is planted substantially in the hearts of the subjects of Great Britain; and it is only those Governments which are doubtful of their own popularity, that are given to torture and catch at words, and to aggravate slips of temper or of tongue into the crimes of sedition and treason. If, on account of some rash or careless expression at public meetings, people are to be punished as guilty of sedition, there is an end to all freedom in examining the measures of Government. The public expectation is alive to the result of the first of these trials; and I say it will be no honour, and no glory to you, in such a case, to set the first example of finding a verdict which would subject people to punishment in the circumstances of these pannels. Even if you think that the crime is doubtful, I trust you will not be disposed to lend yourselves to the over-zeal of his Majesty's professional advisers in this part of the kingdom. I say, I trust you will not shew a disposition to follow, where the keen and jealous eyes of persons in authority may spy out matters of offence; and that Scotchmen will not be forward to construe into guilt those excesses of speech into which they know that the *fervid genius* of their countrymen is so apt to hurry them,—especially when they find that far worse excesses are pardoned in England to the phlegmatic English,—in whom they have far less apology.

Gentlemen, I have exhausted you and myself,—but I have one word more to say. This is a case above all other cases that is fit for the decision of a Jury,—a case in which you can expect but little assistance from the Court, and in which, I will venture to say, you ought to receive no impression from that quarter, but judge and determine for yourselves. The great use of a Jury is not to determine questions of evidence, and to weigh opposite probabilities in a complicated proof. Its high and its main use is to enter into the feelings of the party accused, and instead of entertaining the stern notions of fixed and inflexible duty which must adhere to the minds of Judges who administer inflexible law, to be moved by the particular circumstances of every particular case,—to be touched with a nearer sense of human infirmities, and to temper and soften the law itself in its application to individuals. It is on this account alone, I believe, that in foreign lands the privilege of Jury-trial as existing in this country is regarded as so valuable. And certainly its value has always been held chiefly apparent in trials for alleged political offences,—with regard to which it is the presumption of the law itself, that Judges might be apt to identify themselves with the Crown, as they belong to the aristocratical

part of society, and to those great establishments which appear to be peculiarly threatened when sedition and public disturbance are excited. Whether there is any reason for this distrust is not now the question; and in this Court I am perfectly assured that we have no reason whatever to doubt the impartiality of the Bench. But it is not to them that the country looks,—that all Britons, and all Foreigners look, in questions with the Crown, when, as head of the State, it demands punishment on any of its subjects for alleged want of obedience.—In all such cases, the friends of liberty and justice look with pride and with confidence to the right that a man has to be tried by his Peers.

If this question then is left to you, and to you only, I am sure you will not easily take it for granted that the pannels at the bar were actuated by seditious motives. You will judge, whether in the publication of this foolish, intemperate and absurd book, there was an intention to excite disorder and commotion in the country, and that in this conduct my client was blind to his own interest, and to the evil consequences to his country. The essence of the crime, I can never too often repeat, consists in *the intention*; and in judging of this you will take *all* the circumstances and *all* the acts of the parties into your view. In a season of great distress, one single meeting was held for petitioning the Legislature,—a purpose which redeems every thing that might have been amiss in their proceedings. Nothing but a petition to Parliament was, in fact, the result of the meeting,—and 400 copies only of these foolish speeches were printed. No steps were taken to promote disorder, but the most entire tranquillity then and afterwards prevailed. When I think of these things, Gentlemen, I can have no doubt at all of the issue of this trial. You cannot but perceive that the pannels have not been proved guilty of sedition; for they have not been proved to have said or done any thing *wickedly and felaniously, or for the purpose* of exciting tumult and disorder in the country. Their general conduct and character render such an imputation in the highest degree improbable; and the particular facts which have been proved are so far from supporting it, that, when taken altogether, they are obviously inconsistent with its truth.

The Lord Justice-Clerk, at eleven o'clock, addressed the Jury in the following manner.

Gentlemen of the Jury,—Although you have heard from the learned Counsel who has just now addressed you, with

infinite ability, on the part of one of the pannels, that this is a case more fitted for the particular consideration and final decision of a Jury than of the Court, and that here the Court has less concern, and less to do, than in any other species of trial; I am much afraid that, in the view which I entertain of the duty incumbent on me on this occasion, I shall be under the indispensable necessity of still detaining you for some portion of time, notwithstanding the fatiguing duty you have had to perform. In consequence of the alteration of the law relative to proceedings in this Court, it is no longer necessary to take down the evidence in writing, but it is still the duty of the presiding Judge to sum up that evidence to the Jury who are to decide upon it; and, notwithstanding what the learned gentleman said, (and I am not disposed to find fault with his remark), I shall state to you for your consideration, the nature of the charge and the evidence exhibited against the prisoners at the bar. But even if I were not enjoined by the positive authority of statute to do so, I should not have hesitated, in such a case as the present, to state to you my view of the evidence and of the law applicable to it. It is your province, indeed, to judge of the whole of the case; but sitting here as a guardian of the rights and privileges of the people, and bound as I am to administer the law according to the best of my judgment, I have to state to you, clearly and distinctly, the view I have of the law of this case, and then to leave it to you to do your duty, as I shall now endeavour to do mine.

The Indictment exhibited against the prisoners at the bar, contains a general charge of sedition in the major proposition; and in the minor you have the narrative of the facts, in reference to which the Public Prosecutor subsumes, that they are both, or one or other of them, guilty of the crime of sedition, actors or actor, or art and part.

You will have observed, that the evidence which has been laid before you is of a different nature, as it affects the different prisoners. One of them is charged with having delivered, at a meeting held in the neighbourhood of the town of Kilmarnock, a speech, which the Public Prosecutor states to have been of a seditious nature, containing a number of inflammatory remarks and assertions, calculated to degrade and bring into contempt the Government and Legislature, and to withdraw therefrom the confidence and affections of the people, and fill the realm with trouble and dissention; the manuscript of which speech he is charged with having afterwards delivered to a printer, for the purpose of its being printed. And with regard to the other prisoner, it is stated, that he

prepared for the press an account of the proceedings at the meeting, which account contains the speech above referred to, and others also alleged to be of a seditious and inflammatory nature, and that he assisted afterwards in its circulation, by exposing and actually selling it in his own shop.

It will be necessary for you first to consider what is the evidence of the facts as it applies to both and each of these prisoners. After calling your attention to the facts, I shall make some observations on the law of the case; and I shall then desire you, upon these facts and that law, to consider whether there is ground for the conclusion of the Public Prosecutor.

It may save you trouble, to state to you at the beginning the definition of the crime of sedition, as given to us by an authority, which is one of the most respectable with regard to the law that can exist in any country whatever. I do not know that there is any foundation, in point of fact, for the supposition which was mentioned, that the author I allude to had ever been suspected of having any particular bias in giving a view of this department of the law. I never before heard that such a notion existed in the minds of the people. But sure I am, if they who read his book look to the authorities and decisions to which he refers, they will be most decidedly of opinion, that he has expounded the law in the most clear, able, and satisfactory manner. Mr Hume, the author to whom I allude, gives this general description of the crime of sedition *: "I had formerly, in drawing the line between sedition and leasing-making, a proper occasion to explain the general notion of this offence, and I shall not now attempt any farther to describe it (being of so various and comprehensive a nature), than by saying that it reaches all those practices, whether by deed, word, or writing, or of whatsoever kind, which are suited and intended to disturb the tranquillity of the state, for the purpose of producing public trouble or commotion, and moving his Majesty's subjects to the dislike, resistance, or subversion of the established government and laws, or settled frame and order of things.

"Under this description would fall a work (such as it has been reserved for the wickedness of the present age to produce), which should teach that all monarchy and hereditary rank, or all clerical dignities and establishments of religion, are an abuse and usurpation, contrary to reason and justice, and unfit to be any longer suffered or continued. Or, though the piece should not set out upon so broad a principle as this, if it argue (in common with the many compositions which have lately been pressed upon the world) that the power of

* Vol. ii. p. 484.

the King is overgrown, and ought, *at any hazard*, to be retrenched; or that the Commons are a mere nominal and pretended representative of the people, whose laws are entitled to no manner of regard; or that the whole state is full of corruption, and that the people ought to take the office of reforming it upon themselves. All exhortations of this kind, whether any commotion follow on them or not (for if any do follow, then it will depend on the degree, fashion, and immediate occasion of that disturbance, whether it is not treason in those who partake of it), are undoubted acts of sedition, being calculated and employed for the direct purpose of loosening the hold which the Government has of the opinions and affections of the people, and thus preparing them for acts of resistance or aggression."

Several of the instances which he gives of this crime were already read to you, and I need not repeat them. But I refer to another passage farther on *, in which this gentleman confirms and illustrates his opinion. "The reason in all these cases is the same. The crime of sedition, therefore, lies in the stirring of such humours as naturally tend to change and commotion in the state. So near, indeed, is the alliance between sedition and treason, that if, instead of sowing the seeds of a hostile disposition to the Government, or preparing such materials as in time may kindle into a flame, the offender shall seek the same object more immediately, by a direct and definite exhortation to the people to rise at that particular season and conjuncture, as advantageous for gaining their ends; this measure, in like manner, as a consultation to levy war, seems to be nothing less than an act of compassing the death of the King, being a decided and material step towards the doing of that which cannot be done without the plain danger of the Sovereign's life."

Again, in speaking of a distinction which has to-day been glanced at, between verbal and real sedition, Mr Hume expresses himself in these words †: "If all that can be said of the composition is, generally, that it is of an inflammatory kind; such as by the principles it inculcates, and the obloquy it throws out on the management of public affairs, tends to the infusion of jealousy and discontent among the multitude; but without proceeding to any proposal of a plan, or set of active operations, as grounded upon these principles, and fit to be followed in the existing state of things; this may with propriety be referred to the head of verbal sedition. It was for a composition of this character that Robertson and Berry were convicted, as has been mentioned; and William Stewart was outlawed upon a charge of the like nature, on the 11th

* Vol. ii. p. 494. † Ibid. p. 496.

March 1793." So that you see it most distinctly stated, that words, if of an inflammatory nature, though not followed by active operations, will amount to verbal sedition.

I shall content myself with reading to you one other passage, without offering a word of my own upon the subject. This passage refers to the distinction between the crime of sedition and that of leasing-making, which is still recognised in our law. "But sedition is a crime of a far wider and more various description, as well as of a deeper character, which may equally be committed in relation to any of the other powers, orders, or parts of the public constitution of the land, or to any class or division of the society of its inhabitants, and without the use of special calumnies or slanders against the King, or any other individual; as by the forming of combinations, the taking of resolutions, the circulation of doctrines and opinions, or, in general, the pursuit of any *course of measures and actions*, such as directly tends to resistance of the legislature or established government, or to the new-modelling of the state without the authority of law. No invective, therefore, how violent soever, against monarchy in general,—no abuse, the most outrageous, of the British Constitution,—no proceedings, though ever so plainly tending to abolish that venerable system, and set up a new form of government in its room, would justify a charge of leasing-making. Because, though all involving the state and office of the King, as part of the Constitution, such projects are levelled against the whole system, and are not moved out of special grudge to the prince upon the throne, but spring from a deeper and more malignant principle, as well as employ more direct and more extensive means than that of mere slander of the person and conduct of the King. Thus sedition is a proper crime against the State, and holds the next place after treason, to which it is nearly allied, and which it may often, but by a short interval, precede. The other is a personal offence, or verbal injury offered to the King, and which the law considers in so much a more serious light than other injuries of that class, partly by reason of the just regard it has to the peace and tranquillity of the Head of the State, the most eminent person in the land; and partly by reason of the possible evil influence of such an example on the affections and dispositions of his subjects."

Having thus explained, from what I certainly take to be undoubted authority, what constitutes sedition, I have to state to you what is equally clear in point of law, and what it is of essential importance you should keep in view, and upon which both sides of the bar are agreed,—that it must be

held as the fundamental rule of your conduct in deciding this case, that by the law of Scotland your duty is not limited to a consideration of the facts merely, but that it is your province to take into view the nature of the speeches and writing complained of, as well as the fact of publishing; and I state to you in the words used by a distinguished Judge in a former case of sedition, though not exactly parallel to the present, that it is not only your right and privilege, but your unquestionable duty, to say whether sedition has been committed or not.

Having paved the way to the consideration of the question before us, we are first to consider what is the evidence which the Prosecutor has adduced as to M'Laren having delivered a speech containing passages such as those set forth in the Indictment. You will recollect that you had brought before you Mr Andrew Finnie, a witness on the part of the Crown, but who, in reference to the whole of the transactions under consideration, was himself a person, to a certain extent, concerned. He was a member of the committee that prepared matters for the meeting, was himself present at the meeting, and was afterwards selected to take a lead in the subsequent proceedings. You are to judge of his evidence, which he appeared to give in a fair, open, and candid manner. I see no objection to the weight of his evidence. He says, that he is not able to speak distinctly as to the whole of M'Laren's speech, but that to the latter part of it he did pay particular attention. He swore that he heard him deliver these words: "We will lay," or "let us lay, our "petitions at the foot of the Throne, where sits our August "Prince, whose generous nature will incline his ear to the "cries of his people, which he is bound to do by the consti-"tutional laws of his country; and we are thereby bound to "give him our allegiance: but if he should be so infatuated "as to turn a deaf ear to the general cries or voice of his "people, to hell with our allegiance." This is the whole of the passage as far as the witness recollects. It was at the close of the speech these words were used. He states, that the words, "And we are thereby bound to give him our allegiance; but if "he should be so infatuated as to turn a deaf ear to the general "cries or voice of his people," and not "just petition," being the words subsequently cited in the Indictment, preceded these words "to hell with our allegiance." He is positive, and was equally so upon his cross-examination, with regard to what he heard M'Laren say. He states, that the words, "to hell with our allegiance," struck him as strong, and that though he did not take any notes of them, he considered them so strong that he can swear to them. You will therefore con-

sider as far as this witness goes, whether you have not a deposition to the very words. It will be for you to judge, whether the exact words charged in the Indictment have been proved or not, or whether the essential parts of the passage have been proved. When a very close affinity is instructed, it is for you to consider what is the fair import.

There is another witness who was called on the part of the prosecution, and who, though he gives but an imperfect account of the speech in general, does swear to what is deserving of attention. He remembers part of the speech towards the end, "to hell with, or for allegiance." He said, the words, "if he turned a deaf ear to the voice of his people," were followed by the expressions I have just cited about allegiance. This is the evidence of Merrie, and you will consider whether it does not corroborate the special account which Mr Finnie gives of the speech he heard M'Laren deliver. No attempt was made to examine Finnie as to the situation where he stood at the meeting, or whether there was any noise or difficulty of hearing.

The question as to the speech actually delivered does not rest here, because you will find it was admitted by M'Laren himself, in his declaration before the Sheriff, that he did give in a manuscript containing his speech to the committee to be printed, and that the printed account "is near about what the declarant said on the above occasion, except what is said about the middle of the seventh page as to allegiance, which the declarant thinks he did not deliver in the words as expressed in the publication." You have, besides this, the evidence of other witnesses. In particular, Samson swears, that the speech was read over in M'Laren's presence, and that Mr Baird, the other prisoner, made an alteration on it in pencil; that he inserted words, making the speech conformable to the printed account of it here before us. So that this circumstance of the MS. having been produced, read over, and revised, in the presence of these men, and an alteration being made by Baird, without any objection, as Samson swears, having been made by M'Laren, shews that M'Laren approved of the alteration, or at least that he did not oppose it; and this goes far with the other evidence to shew what was the true nature of the speech delivered upon that occasion.

You have to compare the printed report with the very words as heard by Finnie which came out of M'Laren's mouth. If you think it your duty to take the printed statement as the true account of what was said, "But should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited that allegiance; yes, my fellow townsmen,

in such a case, to —— with their allegiance;" you will keep in view, that M'Laren gave in the manuscript of his speech to be printed, and was present when Baird inserted these words; and you will decide for yourselves, whether there is any doubt that he permitted that, which he took no steps to prevent. But again, if you take into view the words as given by a respectable witness, and confirmed, to a certain extent, by another witness, and admitted by the prisoner himself to Mr Johnstone, you will consider whether there is any rational ground for doubt as to the import of the passage of the speech which M'Laren delivered having been sufficiently established.

Next, with regard to Mr Baird, the case is of a different description as to the facts, for he is not alleged to have made any speech at all. The charge against him is, that he was one of those who printed and published a statement of those proceedings, containing not only M'Laren's speech, but those of others which are founded on as being of a seditious and inflammatory nature. It does appear in evidence that Mr Baird was at meetings of the committee, both before and after the public meeting; and when the decision was taken as to printing and publishing the proceedings he was present. It has, no doubt, been proved, on his part, that he was one of those who did oppose in the committee the printing of the passage in M'Laren's speech, but that his objection was overruled; and had Mr Baird's case rested here, and had the Public Prosecutor endeavoured to implicate him in the publication, by his merely being present at the public meeting, it would have been difficult indeed to have persuaded any Jury to have found a verdict against him. But his conduct was different; for, after his objection had been overruled, he superintended the publication; and it is fully proved, that he went twice or three times to the printing-office with Mr Andrew, who was employed in revising the proof sheets, and that, upon one of these occasions, he suggested the correction of a grammatical error. This evidence will probably be sufficient to satisfy you that Mr Baird did take a concern in the printing and publishing of what is complained of, even after he stated objections to one passage. His conduct, therefore, at this period, makes him responsible, even if the evidence stopt there; but has it not also appeared in evidence, that Crawford holds him responsible for the payment of the printer's account, and were not many copies of the pamphlet sold at his shop? Mr Finnie swore that Mr Baird got some copies from him, and expressed surprise that the witness had not got quit of all his copies. Mr Baird is not a bookseller, but a

grocer, and disposed of the copies in his shop; one of which copies it has been proved was there bought by Hugh Wilson.

Having stated to you what appears to me to be the result of the evidence in these particulars as to the facts of delivering and publishing the speeches complained of in this Indictment, there remains behind a much more important question for your decision, which it is your entire province to decide on, but with respect to which, it is my duty to submit a few observations to you. You have already had an opportunity of hearing, that on the face of this Indictment, as the matters are there disclosed and undertaken to be proved, the Court considered the charge relevant, and fit to be submitted to a Jury; and now that the evidence has been led, and we have the whole circumstances investigated, I have no difficulty in stating, that notwithstanding all that I have listened to in the very learned, able and ingenious criticisms, both on M'Laren's speech and on the passages of the publication which have been founded on, I am still of opinion there is matter which is of a seditious description. It would be most improper, however, on my part to hold out to you that I think this a case of sedition of a most atrocious or aggravated description. That would be an erroneous impression. I have to observe also, that I am far from thinking it is proper, in the case you are now trying, to refer to other cases which are not parallel to it in the facts. But in reference to the prisoners at the bar, it does appear to me, and to the rest of the Judges, to be clear, that there is on the face of the speech of M'Laren, and in the different passages which have been referred to, as well as in the context of the publication, matter of a seditious nature. How far that seditious matter has existence in point of fact, or is affected by the circumstances in evidence, or the remarks made on it, you, however, are to decide. In judging of this, you are called upon to look to the intention imputed to the parties; and I concur with the learned Gentleman in thinking, that it is the part of the Public Prosecutor to establish the criminal tendency of this alleged seditious publication. Criminal intention, or that the facts were committed wickedly and feloniously as charged, constitutes the very essence of the crime. You must be satisfied, that the proceeding was not only seditious in itself, but that there was the criminal purpose in the speeches and publication which is charged in the Indictment. I do apprehend, that when a Jury is called upon to decide upon the import of a speech or of a publication, it is their bounden duty to put upon that speech and publication a fair and even a mild interpretation. They are not called upon to

stretch matters, or to endeavour to find out a far-fetched meaning in words. If words are of an ambiguous nature, the mildest construction of them is to be adopted; but, on the other hand, reason requires that a sound, plain, honest meaning be given to language. It is not disputed by the Public Prosecutor, (for he himself, in some measure, followed such a course), that it is necessary to look to the context, and not to take half a sentence of a speech or publication, but to give fair play to the accused, by referring to what precedes and to what follows. It is your business to take the documents into your own hands, and looking to the whole context to draw the conclusion whether there is sedition or not.

It is hardly possible at this late hour to go through every one of the passages which are founded on, and far less through the whole publication; but I beg leave to say, in reference to the speech of M'Laren, that there do appear to me a most improper style and tone in the whole of it. He refers to transactions of a very distant period, of which no sober-minded man would wish to revive or obtrude the recollection, as affording any rule of conduct for the people of this country, in reference to their present situation. From the beginning of the speech, in which complaints are made of the oppressions under which the country is labouring, to the conclusion in which reference is made to the Prince Regent, there is a general style of inflammatory declamation. Nor was this effusion unpremeditated, for notes of the speech were prepared by him at an earlier or later period before the meeting. Without going into particulars, I say there is a tone and language in this speech which are strongly inflammatory, and tending to excite in the people discontent and disaffection against the Government and Legislature. Of this it is, however, your province to judge. I have no difficulty in saying that the language appears to me not to be of a description which can be reconciled to the single object of petitioning.

The passage upon which the most important comments have been made is that with regard to the petition to the Prince Regent, and the consequence of his not listening to the just petitions of the people. The passage is in these words: "Let us lay our petitions at the foot of the Throne, where sits our August Prince, whose gracious nature will incline his ear to listen to the cries of his people, which he is bound to do by the laws of the country: But, should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance. Yes, my fellow-townsmen, in such a case, to hell with our allegiance." Take the expressions as given either in the publication, or as in evidence by

the witnesses, and say what is your opinion as to this part of the speech. A great deal of most able and ingenious criticism has been bestowed upon this passage, and with it the Counsel for the pannel grappled to the utmost, perceiving it of vital importance to the interest of his client. He was bordering upon very delicate ground, indeed, in the defence which he maintained. But, after all you have heard on the subject, you are to consider, whether, notwithstanding the favourable remarks made in reference to the Prince Regent, which I admit do appear in the first part of the passage in question, the language in the following part be justifiable, as having reference to the petitions of the people at large, or to the petition of these particular persons. The term, just petition, no doubt, is employed. But who is to judge of the justice of the petition? It would appear from all that passed that the petitioners themselves were the judges. What was said to be the alternative if this petition was refused?—"To hell with allegiance," or "our allegiance." I ask of you, as sensible and reasonable men, whether this language does not indicate that the speaker had formed a purpose of throwing off his allegiance, in the event contemplated of a rejection of the petitions in question? He was to array himself against his Sovereign, not in the ludicrous manner that Mr Jeffrey stated, but in a very different and much more serious manner; and I boldly affirm, that if a single step had been taken, by following up the language then employed by any overt act, it would not have been sedition, but plain and palpable treason. Whether the language that was here used, which, it has been said, only expresses a very delicate principle in the constitutional law of this country, was calculated to excite discontent, disunion, and public disturbance, is the question for your decision. You will judge whether the words were uttered; you will give them fair play in judging of their meaning; and in the interpretation of them you will have a reference to the other parts of the speech. In that way, you will satisfy your minds as to the grounds of the conclusion you may come to, and decide as to the intention of the speaker, and the import of the passage.

You will judge also of the meaning of the term "Oligarchy," which occurs in the speech, and in different parts of this publication: you will consider whether it alludes to any of the branches of the Legislature, or must be limited to the persons forming the actual Administration. I coincide with the opinion which was hinted at by my brother on my right hand, particularly when I consider the way and manner in which the term is explained by another speech founded on in the Indictment.

"We have these twenty-five years been condemned to incessant and unparalleled slavery by a usurped Oligarchy, who pretend to be our guardians and representatives, while, in fact, they are nothing but our inflexible and determined enemies." I think it is impossible, by any interpretation, to suppose that this has reference to Ministers. It obviously has reference to the House of Commons, one of the branches of the Legislature. When they complain of the oppression under which the country labours, they have reference to the Commons House of Parliament. I think the same interpretation is applicable to M'Laren's speech. You are to consider, then, whether the House of Commons, as now constituted, is meant to be designated by the "usurped Oligarchy, who pretend to be our guardians and representatives, while, in fact, they are nothing but our inflexible and determined enemies, and who have these twenty-five years condemned the country to incessant and unparalleled slavery;" and you are to determine, whether by propagating such opinions in a speech to an assemblage of 4000 persons, and afterwards introducing them in a pamphlet which was sold and circulated in the country, the pannels were not guilty of sedition. I submit to you, that if there is any meaning in words, this was degrading the House of Commons, —casting on them the imputation of having enslaved the country for the twenty-five preceding years, and attributing to them all the misery which the country is represented as suffering.

There is another passage in the publication to which I think it necessary to call your attention. I mean that general statement which was made as to the proceedings which took place in the year 1793. You will find the passage in page 2. of the Indictment. "But let us come nearer home. Look at the year 1793, when the debt amounted to two hundred and eleven millions, and the annual taxation to about eighteen millions; when liberty began to rear her drooping head in the country; when associations were formed from one end of the kingdom to another, composed of men eminent for their talents and virtue, to assert their rights; when a neighbouring nation had just thrown off a yoke which had become intolerable,—what did the wise rulers of this country do? Why, they declared war, not only against the French nation, but also against the friends of liberty at home." It has been argued, that the term, "wise rulers," means the Ministers for the time, and that their conduct may be discussed without blame. I concur in the observation, that there is no sedition in the censure of Administration merely as servants of the Crown. But the passage clearly applies, not only to the

Government of the day, but to the system of Government,—to the Legislature itself. How can that be doubted, when you observe the concluding words: "Why, they declared war not only against the French nation, but also against the friends of liberty at home." Look also at the context. The clear import of it is, that when the country was in the awful situation described by the learned counsel, the Government declared war against the liberties of the country. What took place at that time is matter of notoriety. New measures were then necessarily resorted to for the salvation of this country against the attacks of foreign and domestic foes. King, Lords and Commons, united for the purpose of securing the liberties of the country, and their measures are here manifestly represented under these words: "They declared war not only against the French nation, but also against the friends of liberty at home." You will say, in point of fact, whether the Ministry or the whole Legislature were referred to in this passage, and whether to circulate it was not to propagate sedition throughout the country.

There are other passages, into the consideration of which I cannot now enter. I shall just refer to one which has been commented on at great length. The passage is, "And a House of Commons; but the latter is corrupted; it is decayed and worn out; it is not really what it is called,—it is not a House of Commons," &c. It is said that there has been language used in Parliament, and passages in petitions presented to Parliament stronger and more offensive in their nature, than this founded on by the Public Prosecutor; and that such petitions were received and laid upon the table of the House of Commons. Passages were read to you to prove this. Upon this part of the subject I must observe, that what is, or is not tolerated by the Houses of Parliament, must be foreign to our present discussion. They are the best judges of what is a violation of their privileges; but this much I state to you, that if seditious language be used out of doors by persons in preparing a petition for Parliament, even if that petition should embody the seditious words themselves, it cannot be pleaded against a charge of sedition that the petition has been received by Parliament. We are bound to judge of the language employed by the test of law and common sense, and by that test to determine whether it is seditious or not. It has been held, again and again, to be no justification, in a charge of sedition, that language even of a more seditious tendency had been used in or out of Parliament without being followed by any punishment.—It is stated for these pannels, that stronger language has been used in other quar-

ters; but the answer is, that is nothing to the question under consideration. If the language here be seditious, it is no matter whether such abuses have been passed over on other occasions. If such petitions as those referred to had been particularly brought under the view of the House of Commons, I should think they must have been rejected; and it would be matter of astonishment to me, indeed, if petitions couched in language far short of what is now before us were received. But in the multiplicity of petitions presented to that House, some may pass without due attention. Perhaps very objectionable petitions do lie there. But if the Public Prosecutor proves in this Court the utterance and publication of seditious language, it is of no consequence that petitions containing such language have even been received unchallenged by the House of Commons.

There is a part of the defence, however, deserving of your serious attention. It was ably argued by Mr Clerk, that the language which is here complained of, having been used in connection with the exercise of the legal right of petitioning the Legislature, cannot be considered as seditious. God forbid that any thing should be said by me hostile to the right of petitioning the House of Commons, the House of Lords, or the Sovereign, if the people are respectful in their language; for to state grievances and apply for redress, is the undoubted and unalienable right of the subjects of this realm. But I have no difficulty in saying, that if, under the pretence of petitioning, language of a seditious nature be used, those using or publishing it must answer for the consequences. The sacredness of the right which is to be carried into effect, will not sanction the use of unlawful means in the accomplishment of it; and those who come forward upon such occasions must abstain from inflammatory, seditious, or treasonable expressions. It would be a gross abuse of the inviolable right of petitioning, if it afforded an opportunity for any kind of language being uttered, however improper or reprehensible. Such never can be the result of what is due to the sacred right of petitioning; and therefore the learned gentleman admitted that he did not carry his argument so far as to say, that a petition may sanction any thing of an improper nature; but he argued, that if you be satisfied the object was to petition the Legislature, you will be disposed to make due allowance for the language which may be used in calling attention to grievances. To this extent the observation is well founded. His good sense must have made him perceive that both the law and constitution would sink under any other doctrine. That is the test to which you are to bring the matter now un-

der your consideration. You are to look to the whole facts and whole publication; and you will judge whether, when the people assembled to prepare this petition, there was or was not a blameable excess in the language employed by them, and whether this was not greatly aggravated by the proceedings of the meeting being embodied in a publication, and circulated over the country. I have no wish, Gentlemen, to press this case further than the facts appear to warrant. It is your bounden duty to weigh all those expressions which are fairly admitted to be too strong, and even indecent; and it is your province to say whether these expressions do amount to sedition, have a tendency to bring into contempt the Government and Legislature, and to stir up the people to disaffection and rebellion.

I certainly do most sincerely lament that our attention has been called to this case. This is the first trial for sedition that has occurred for a considerable length of time; and I can assure the learned gentlemen that I had fondly flattered myself that even at my time of life I should not have again had occasion to apply my mind to the study of this part of the law. I hoped and trusted, that after the clear exposition of the law in 1793, 1794 and 1795, in the different prosecutions which were then found necessary, sanctioned and approved of by the unanimous voice of the country, I should not have been obliged to consider cases of this description. But so it is, that although the situation of this country is so highly prosperous and enviable when compared with the rest of Europe, it is in Britain in 1817 that we are called on to consider such cases. An allusion was made to the state of the country at the former period, as accounting for and justfying the prosecutions which then took place, as well as their result. But the learned counsel was afterwards under a necessity of alluding also to what has recently happened throughout the empire at large. Extraordinary and strong measures have been adopted, and the enactment of new laws has been rendered necessary by the state of the times. But you are not to be affected by such considerations, and I would not even have alluded to them had they not been alluded to by the Counsel. You must lay all considerations of this kind out of your view; and, considering this Indictment as brought by his Majesty's Advocate in the discharge of his duty, you are to determine on the facts, and say whether the pannels are guilty or not of sedition.

I regret extremely, in a different point of view, that this should be the first case brought before this Court, and from a county with which I am connected by so many ties. It appears to me that both of the prisoners had been men of ex-

emplary conduct and good character. According to the evidence, M'Laren's private character had been very respectable. Nothing but what was right had ever been observed in his conduct. He had never demonstrated any thing like a disposition to tumult or disturbance, but was a volunteer, and had served as such with reputation. The testimony to his general character well deserves your consideration, in judging of the criminal intentions of the parties, and deciding whether their purposes were seditious. With regard to Mr Baird, again, you will concur with me in deeply lamenting the exhibition of this charge against him, standing as he has done in so fair a situation in society. Many of the witnesses even for the Crown have given him a high character. The inhabitants of Kilmarnock had some time ago appointed him one of their police commissioners, thus shewing their good opinion of him. It appears that he was a man of respectable moral character, and, in the opinion of the witnesses, attached to the Government and to the Constitution, though he had a strong opinion of the propriety and necessity of a reform in Parliament. It has been strongly affirmed for him, that he never had any thing further in contemplation upon this or any other occasion. With regard to both the prisoners, they were not known to have been ever connected with any other political societies.

These are points important for your consideration in judging of the essential question which you are to determine as to the guilt of the prisoners. If, upon a careful consideration of the whole facts in the publication, and the evidence which has been adduced, you shall be of opinion that no sedition or seditious intention has been proved against the prisoners, you will find by your verdict that they are not guilty of the charge. If, on the other hand, you are of opinion that there is seditious matter in the speech and publication, and that the charge of criminal intention imputed to them in the Indictment has not been done away by the general conduct of the prisoners, you will not, I am confident, shrink from your duty, but will find them guilty of the crime of sedition libelled in the Indictment. And, if you think that the scales hang doubtful, and that it is difficult to say whether the prisoners were guilty or not, the former good character and conduct of these men are entitled to favourable consideration. I leave the case in your hands, being confident that you have paid most particular attention to all that has passed, and can have no object in view but to return a conscientious verdict. Whatever you may do, I trust your verdict will be satisfactory to your own minds, and equally so to the public.

7th April 1817.

LORD JUSTICE-CLERK.—Gentlemen of the Jury, Who is your Chancellor?

JURY.—Mr M'Kinlay.
(Mr M'Kinlay gave the verdict into Court).

LORD-JUSTICE-CLERK.—Alexander M'Laren and Thomas Baird, attend to the verdict of the Jury on your case.

At Edinburgh, the 6th of April 1817 *years.*

The above Assize having inclosed, made choice of the said Archibald Mackinlay to be their chancellor, and of the said John Baxter to be their clerk; and having considered the criminal indictment, raised at the instance of his Majesty's Advocate for his Majesty's interest against Alexander M'Laren and Thomas Baird, pannels, the interlocutor of relevancy pronounced thereon by the Court, the evidence adduced in proof of the indictment, and the evidence adduced in exculpation, they, by a plurality of voices, find Alexander M'Laren guilty of the crimes libelled in the indictment; and Thomas Baird, all in one voice find him guilty of the crimes libelled in the indictment. But, in consideration of their former good character, unanimously recommend them both to the clemency of the Court. In witness whereof, their said chancellor and clerk have subscribed these presents, consisting of this and the preceding two pages, in their names and by their appointment, place and date foresaid.

(Signed) A. MACKINLAY, *Chancellor.*
J. BAXTER, *Clerk.*

LORD JUSTICE-CLERK.—Gentlemen of the Jury, you are now discharged from the very fatiguing and painful duty which you have had to perform; and I feel it incumbent on me to state to you, that the verdict which you have returned, is, in its general result, such as I was led to expect from a Jury of your respectability, after the unwearied attention you have bestowed upon the whole of the trial. I am confident that this verdict, while it is satisfactory to your own minds, will be of great service to your country; and I have only to add, that the recommendation with which you have accompanied the verdict, and which, under all the circumstances of the case, is so proper, will meet from the Court with all the attention it deserves.

LORD ADVOCATE.—It only remains for me now to crave the judgment of the Court.

Lord Justice-Clerk.—Have the counsel for the prisoners any thing to say on this verdict?

Mr Jeffrey.—In stating to your Lordships, in one or two words, what has occurred to us on the verdict, I hope I am not doing more than my duty. It appears to us, that though its general meaning is impossible to be mistaken, there is an inaccuracy in one point, which is worthy of consideration. Both the prisoners are charged *with sedition and with no other crime*, and the verdict has found them both guilty of the *crimes* libelled, using the plural and not the singular number. There may be many facts charged in the minor proposition of the indictment, but there is only one crime charged in the major proposition in this case; and you are aware that the verdict is an answer to the major, and not to the minor proposition. Logical accuracy is always required on these occasions, and this, therefore, is not a verdict on which the Court should proceed to inflict punishment. There is only *one* crime charged in the major proposition, and the minor contains different acts libelled on in proof of the crime stated in the major proposition, and yet the verdict finds the pannels guilty of the crimes libelled on. I am now arguing to a court of law, and not to a court of equity. The verdict, in finding the prisoners guilty of the crimes libelled, has found them guilty of something not charged against them.—There is another circumstance which it is my duty to mention, that this verdict appears to be dated on Sunday. I believe this objection has occurred in other cases, but has never hitherto been seriously argued.

Lord Justice-Clerk.—Mr Jeffrey is only doing his duty in stating any objections that occurred to him. But I apprehend there is nothing in the objections which have been offered. The mere slip of a letter cannot be considered as a substantial objection in this case. If *two crimes* had been charged in the major proposition, and the verdict had only found the prisoners guilty of the *crime* libelled, it might have been difficult to say which of the crimes was meant. But here there can be no doubt of the meaning of the verdict.

Lord Hermand.—I remember in a trial at Ayr, of one Lowrie, on a charge of theft and reset of theft, the Jury found the pannel guilty of the crime libelled. I pleaded that the verdict was void, as being uncertain, at least that the *mitior poena* should be inflicted. Lord Justice-Clerk Miller adopted the latter alternative, and imposed an arbitrary punish-

ment. A similar circumstance occurred in a question before the Court of Admiralty, about a wreck on the coast of Orkney. In this case the word crimes is not improper. *Sedition* is the general character of the charge; but there are two species of sedition libelled,—one the making a speech, another the publishing a book.

Lord HERMAND.—I concur in the observations which your Lordship addressed to the Jury. I think this Jury deserves the thanks of the Court; and, what is more, the thanks of the country. I think they deserve the thanks of another class of men, of whom I know little but by report,—of some who are considering how far they may go in opposition to the Constitution with safety to their lives.

It was said by Counsel, that the present was far from being an aggravated species of sedition. I like it the better for that. It is more agreeable to my feelings,—to the feelings of every Jury, and of every Judge, to have more moderate crimes to try, than to be obliged to inflict transportation, or death.

I am the more impressed with a sense of the merits of this verdict, that when in groping my way about 11 o'clock at night, in the dark streets of this city, and reflecting with myself what verdict I should have given, had I been a Juryman in this case, such was the effect of a blaze of eloquence, that I cannot say whether I would have said yes or no, if I had been at that time obliged to give an opinion, whether or not the prisoners were guilty. Like the Jury I should have wished to have been inclosed for consideration. But, having bestowed it, any doubt disappeared, and I came to the opinion, that the relevancy of the indictment was clear, and the facts completely proved.

Every word—every letter of this indictment has now been found proved. The Jury have found it proved, that after speaking of the Regent with due respect, (whether seriously or not I do not know), they go on to state, "But should he be so infatuated as to turn a deaf ear to their just petition, he has forfeited their allegiance; yes, my fellow-countrymen, in such a case, *to hell with their allegiance*."

It is not the time now to inquire into the evidence; though, were that competent, I should be clear that *this very expression* is proved against the pannels. And it has thus happened, as often occurs, that the strongest circumstances come out in the evidence of the exculpatory witnesses. What I allude to is, the deposition of Brown, who says there was a vote put in the committee with regard to printing the above passage; that some objected to it being printed; and that

another said it ought to be published, in order that the minutes should not be garbled. Is not that evidence that these were the words uttered in the speech? But it is unnecessary to go through the evidence. It appears to me, that it was not the Ministers of the day, but the Constitution that was attacked. But I need not go into that. All that remains for us is to consider the amount of the punishment to be inflicted on the prisoners.

The milder the punishment can be made, if it be such as may deter others from committing the like crimes in time coming, that is the punishment that will meet my wish and that of your Lordships. This case is different from those tried in 1793 and 1794. I looked into them last night. They are extremely different from the present case. There the punishment awarded was transportation. None of your Lordships can be of opinion we can here go that length; and, considering the recommendation of the Jury, I think we shall satisfy our own conscience and the justice of the case, by inflicting six months' imprisonment on the pannels. At the same time, they should be obliged to find security to keep the peace for the period of three years; Mr Baird, who appears to be a man of opulence, under the penalty of L. 200, and the other under that of L. 40, which I think is not unreasonable.

Lord Gillies.—Both of the unfortunate Pannels at the bar stand accused of sedition. Of that crime, after a long trial, conducted with infinite ability on both sides, the unhappy persons have been found guilty by a Jury. Under these circumstances, nothing remains for us but to give effect to the verdict by inflicting such punishment as it appears to us their case deserves. Taking all the circumstances into consideration, and among others the recommendation of the Jury, I concur in opinion as to the punishment which has been proposed,—that they should be imprisoned for six months, and find security for good behaviour.

Lord Pitmilly.—In considering the judgment which should be pronounced on this occasion, we naturally look to the judgments which have been pronounced in similar cases, and particularly to those which have been referred to by Lord Hermand. For in every branch of judicial procedure, and in nothing more than in pronouncing judgment on a verdict inferring an arbitrary punishment, it is desirable to be guided by precedents. If this case had resembled the case of Fyshe Palmer, to which it has been assimilated by Counsel, I would have given it as my opinion that the punishment should be

the same as in that case. And if, unhappily for this country, such cases of *real* and aggravated sedition shall come before this Court, cases little to be distinguished from treason, it will be my opinion, after a full consideration of the law, and of the whole of the former cases, that transportation is the proper punishment. But I agree in the opinion which has been expressed, that this is a case very different from the others alluded to, and that it has a nearer resemblance to that of Robertson and Berry, than to any others which occurred at that time; and I therefore think that imprisonment is the appropriate punishment in this case, and that which is pointed out by former precedent. As to the duration of the confinement, I am always averse to long imprisonment; and considering the recommendation of the Jury, I concur in the limited time proposed in this case.

Having said thus much, I must express my hopes, that this verdict will put down the crime of sedition at this juncture in this country. It was urged in defence of the prisoners, that the culpable expressions were employed when the persons were met, in a season of distress, to petition the King and both Houses of Parliament. But surely the right of petitioning may be exercised without making the speeches and resolutions, at such meetings, vehicles for sedition and treason. What was said in a former case as to the liberty of the press and of speech, may be applied to the right of petitioning. As every man may print or may speak what he pleases, so may he use what language he thinks fit in his petition, or in the speeches and resolutions accompanying the petition: But under this condition, that if in his petition, or in the speeches and resolutions accompanying it, he is guilty of treason, sedition or scandal, he must be answerable for the consequences, just as he would be answerable for those crimes if committed by him in exercising the liberty of the press, or the liberty of speech. Why should it be otherwise? I cannot believe that this necessary restraint on the right of petitioning will be any obstruction to the right itself. If the real object of the petition be to obtain its prayer, why should it be couched in offensive terms? Is that the way to attain its object? It is the very reverse. It is the way to get it refused. Such a course can be followed only for the purpose of getting a refusal, and at the same time spreading alarm through the country. To check such conduct, as the verdict of the Jury tends to do, instead of injuring the right of petitioning, is the method of securing it, and rendering it truly valuable to the country.

I have read the whole of the pamphlet from which extracts

are made in the indictment, and I am sorry to say I have formed a much worse opinion of the intentions of all the parties than I had by reading the indictment, or by any thing that passed on the trial. It may have done little injury, for the range of its circulation was limited; but let any intelligent man consider what would have been the consequences, if this pamphlet had passed unnoticed, and if similar publications had been circulated in every village and populous town in the country. No man who reads this pamphlet can hesitate to say, that in such a case the country would have been filled with the most combustible materials, and that a slight spark would have lighted up rebellion from one end of the island to the other.

I shall only add, that if the prisoners and their associates will not learn wisdom from the verdict, and the opinion of the Court, I trust they will learn it from what was uttered by their own Counsel, with a power of eloquence which, I trust, has made a lasting impression on them. Mr Jeffrey told them that they were treading on delicate ground, that the expressions they used were most improper, indecorous, and absurd, and that what they said only betrayed an ignorance of the subject on which they spoke. I trust they will remember this lesson, and that all others will learn to profit by their example.

Lord Reston.—I am of the same opinion with the Judges who have spoken regarding this verdict, and I particularly agree with the words which have fallen from the last Judge who delivered his sentiments. I shall only farther observe, that while I concur most cordially as to the punishment proposed to be awarded in this case, I have no doubt either of the right or the duty of the Court to inflict a higher punishment when required; and especially to award the punishment of transportation in a case of aggravated sedition. In the present case, the short period of imprisonment which has been suggested, is, I think, sufficient, all circumstances being considered.

Lord Justice-Clerk.—I am extremely happy, that, under the whole circumstances of this case, and particularly the recommendation which has been given to your Lordships by the very respectable Jury who had to try it, I am enabled, in the discharge of my duty, to concur in the proposition now made as to the punishment which should follow upon this verdict. For I have, upon the most mature reflection, and the most deliberate consideration I have been able to bestow upon the law of the case, formed a clear and

unalterable opinion, that, for cases of aggravated sedition, such as those which have been alluded to by some of your Lordships, the proper, the legitimate, the necessary punishment for this Court to award, is, the highest short of a capital one. I take this opportunity, however, of stating as I before did to the Jury, that, notwithstanding the particular circumstances and aspects of this case, it does not appear to be one of that highly aggravated class. But I should be guilty of a dereliction of my duty, if I did not take this opportunity of distinctly stating, that, though not one in the highest class of sedition, the offence of which these prisoners have been convicted, upon evidence, clear, satisfactory and convincing, is a species of sedition attended with circumstances of considerable aggravation. I allude, in particular, to the case of the prisoner, Thomas Baird. For, though I did not think it necessary or proper in me to dwell on that circumstance in my observations to the Jury when I summed up the evidence to them, I do now think it my duty to state, that the situation in which that gentleman stood,—the rank of life in which he formerly moved,—the character he possessed,—the influence he had,—and, above all, the commission which he had lately held as an officer, do, in relation to this offence, and to the circumstances in which it was committed, render his case of greater aggravation than that of the other prisoner. This gentleman, although moving in an elevated sphere in the town of Kilmarnock, and selected by its inhabitants to be a commissioner of police, is proved, by incontrovertible evidence, to have associated for days with persons, some of them of the very lowest rank, (for M'Laren is only an operative weaver), forming a deliberate plan for the meeting which has brought him into his unfortunate situation. I should have conceived Mr Baird would have much better discharged his duty to his country,—would have shewn a much better attention to the general distress, (for which I greatly feel, but trust it is now in a way to be alleviated), had he confined his exertions to contributing, according to his means, for the alleviation of that distress, instead of taking those active measures which it is proved he did take, in preparing the business in meetings,—in concocting the measures of the day,—and, above all, in actually putting in the mouth of the automaton who appeared in that box, a speech, which, when it is examined, will be found to contain the most scandalous and seditious matter. For the contents of that speech, whether Burt was the real or pretended author of it, Mr Baird rendered himself responsible. I must therefore say, that, considering Mr Baird had filled the honourable situation of Captain in a volunteer corps, he

had altogether forgotten his duty in ever lending himself as a party to any such proceedings, the guilt of which is now attached to him by the verdict of the Jury.

With regard to Alexander M'Laren, I have only to say, that he has been found guilty of delivering a speech which answers for itself, and I shall add nothing more on the subject.

But, there is one observation which, in my former remarks, I omitted to state to the Jury, and therefore now think it my duty to make, upon the passage in the indictment taken from one of the speeches, in reference to the conduct of the clergy of Scotland. Your Lordships know well to what I allude. The passage is: "Their *Reverend* hirelings would convince you that you are suffering under the visitation of the Almighty, and therefore ought to be submissive under the chastening stroke." I have asked myself this question, after paying every attention to the ingenious and eloquent observations made in order to give the go-by to this passage, what could be the true meaning of those who were accessory to this most scandalous libel on the clergy of Scotland. I have asked myself, if it was meant to be applied to the Established Clergy, who are thus branded with being "Reverend hirelings, who would convince the people that they are suffering under the visitation of the Almighty, and therefore ought to be submissive under the chastening stroke." Is there any thing in their character to warrant such imputations against them? Did not all those at that meeting know, that there is not one of the Established Clergy who is not completely independent of the Crown itself, and that they hold their situations as securely as any persons whatever do their property? What is there then in the conduct and character of the Established Clergy which could render them liable to the shameful imputation, that, as hirelings, they could be guilty of inculcating any particular doctrines? And what is the foundation of this charge? It is, that they are guilty of having endeavoured to impress on their hearers, that the distress of the country is to be viewed as the dispensation of Providence. Is there any man, with the slightest impression of religion on his mind, who will deny, that the severity of a bad season, the pressure of a bad harvest, proceeds from the will of Providence? Or was it meant to be impressed on the deluded and ignorant hearers at that meeting, that the Government, or any portion of the people, were responsible for the distress prevalent in the country, which had been occasioned by a bad harvest, that had doubled the price of the necessaries of life? And yet because resignation to the Di-

vine Will had been recommended by the Clergy, they are branded as hirelings.

On the other hand, I have asked myself this question,—if this charge was meant to be imputed to the respectable body of Dissenting Clergymen, who, almost without a solitary exception, have shewn themselves to be attached to the best interests of the country, and have been distinguished for their loyalty and steady allegiance? Is it this class that was meant to be so branded? If so, they have to thank those of their flocks who could give countenance to the publication of such scandal against them. This passage appears to me to designate the true character of the publication, as most objectionable and inflammatory. It was intended to weaken the affections of the people to the Government and established constitution of the country, while the character of the ministers of religion was likewise to be degraded. I ask, what would be the consequences if such proceedings were unchecked?

Notwithstanding, however, of this circumstance, which it was my duty not to omit to notice, I am happy, that in reference to the strong testimony borne to their good characters in times past, backed by the recommendation of the Jury, we are justified in the discharge of our sacred duty, in pronouncing the mild sentence, (for the sentence certainly is extremely mild), which has been proposed, viz. that they shall be imprisoned for six months within the tolbooth of the Canongate of Edinburgh, (thus making the punishment of imprisonment as light as can be done), and that Thomas Baird shall find security to keep the peace for three years under the penalty of L. 200; and that Alexander Maclaren, in reference to his circumstances, shall only find security for the same period under the penalty of L. 40.

Alexander Maclaren and Thomas Baird: After a most careful and attentive consideration of the whole circumstances of the case that was exhibited against you, a Jury of your country has found both and each of you, the one by a plurality of voices, and the other, all in one voice, guilty of the crime of *Sedition*, as charged in the indictment. It is, I can assure both of you, a painful duty for me, to announce to you, in reference to this verdict, the judgment which the Court has found it necessary to award against you. I say, I do it with sincere regret, when I reflect on the strong testimony that was borne to your former good characters. I lament that you had permitted yourselves to be misled on this unfortunate day of the 7th of December, the one to utter, and the other afterwards to give circulation to what a Jury has pronounced

to be Sedition. I do trust and hope the result of this verdict, and of the opinions you have heard pronounced by the whole Court, will have its due effect on both of you; that it will teach you, that however apparently innocent your proceedings may have been, they did result in crime, and might have been, if the example had been generally followed, productive of mischief to the interests of your country. I trust also, the salutary check given to proceedings of this description, will have an important effect on the public mind, by shewing, that sacred as the right of Petition is, entitled as the people of this free country are to state their grievances to Government and the Legislature, and to point out what may appear to them as remedies, that right affords no screen or protection to those, who, in the prosecution of that lawful object, lose sight of their duty, and are guilty of the crime of sedition. While the subjects of this country are entitled to state their grievances to the Legislature, they must be careful, that neither in the previous proceedings, the speeches and resolutions, nor in the petitions themselves, they insert matter which is clearly of a criminal nature, seditious in its tendency, and likely to produce lasting mischief to their country. It will teach them, that although entitled to exercise that right, they must not, in its exercise, be guilty of a violation of law. I therefore trust that the result of this trial will be of important benefit to you in the course of your future lives, and that this Court shall not, with regard to you or others, have soon occasion again to animadvert on the crime of sedition. I likewise trust, that considering the recommendation of the Jury, and the lenient punishment which, under all the circumstances, is about to be awarded against you, you will firmly resolve, that, when you again return to society, in which you formerly moved in a respectable line, you will be sincerely loyal in your hearts, and attached to the true interests of your country and the constitution under which you have the happiness to live.

SENTENCE.

The Lord Justice-Clerk and Lords Commissioners of Justiciary having considered the verdict above recorded, in respect thereof decern and adjudge the said Alexander M'Laren and Thomas Baird to be carried from the bar to the Tolbooth of Canongate of Edinburgh, therein to be detained for six months from this date, and thereafter until they shall find,

sufficient caution and surety, acted in the Books of Adjournal, for their good behaviour for the space of three years from and after the expiration of the said period of imprisonment, and that under the respective penalties following: viz. The said Thomas Baird under the penalty of L. 200 Sterling, and the said Alexander M'Laren under the penalty of L. 40; and upon the elapse of the said period of imprisonment, and finding caution as aforesaid, grant warrant to and ordain the Magistrates of Canongate and Keepers of their Tolbooth to set the said Thomas Baird and Alexander M'Laren at liberty.

(Signed) D. Boyle, I. P. D.

FINIS.

The trial of Alexander M'Laren
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